



UNIVERSITÀ DEGLI STUDI DI TRENTO

Scuola di Dottorato in
Studi Giuridici Comparati ed Europei

Doctoral School in Comparative and European Legal Studies

Ph.D.thesis

The research on social enterprise legal systems

—to establish the social enterprise legal system in China

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Academic Year 2014-2015

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Abbreviations:

| | |
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| CIC | Community Interest Company |
| CICR | Community Interest Company Regulation |
| DTI | Department of Trade and Industry |
| EMES | Emergence of Social Enterprise in Europe |
| IPS | Industrial & Provident Society |
| IRC | Internal Revenue Code |
| IRS | Internal Revenue Service |
| L3C | Low-profit Limited Liabilities Company |
| LLC | Limited Liability Company |
| LLCA | Limited Liability Company Act |
| NGOs | Non-Government Organizations |
| FPCs | Flexible Purpose Corporations |
| OECD | Organization for Economic Co-operation and Development |
| PNU _s (民办非企业单位) | People-run Non-enterprise Units |
| PRIs | Program-Related Investments |
| PRC | People's Republic of China |
| SEC | Social Enterprise Coalition |
| SFC _s (农民专业合作社) | Specialized Farmers Cooperatives |
| SEL | Social Enterprise London |
| SPC _s | Social Purpose Corporations |
| UPNE | University Press of New England |
| WMSEP | West Midlands Social Economy Partnership |

Acknowledgments

The thesis would be impossibly finished without the guidance and supports(support) of my supervisors and friends. Therefore, in this very blessed moment in my life, I expressed my gratitude to those who helped and supported me during my studies and work on this dissertation.

First of all, I would like to propose my sincerest gratitude to my advisors, professor Quanxing Wang and professor Luca Nogler, who have supported throughout my thesis with guidance, knowledge, experience, patience, economy, and so on.

Secondly, I want to thank professor Shaohua Zheng, professor Jun Xue, who offer me the opportunity to study in the University of Trento and support me with some useful advices for my research.

Thirdly, I am grateful to professor Carlo Bozaga and doctor Giulia Galera, who supply me with some professional and useful suggestions about my thesis and offer me plenty of literatures.

Fourthly, I want to thank my friends, Yu Su, Meiling Huang, Bo Wang, Runmei Xue, Hanchang Wang, Hongbo Zhang, Fenglin Li, and so on. They gave me various kinds of help for the thesis, as well as the study life in Trento.

Last but not the least, I wish to thank Shanghai University of Finance and Economics, University of Trento, since many professors in these two universities gave me grate support and space to complete my study.

In addition, I want to give my special thanks to my family, who gave me what I need to continue my study and complete the thesis.

Abstract

In the 1970's, western countries endured economic crisis. As a result, the reform of welfare system took place, including the reduction of entitlement-based income assistance for vulnerable groups, and the tightening non-profit funding environment at government foundation lever, which led to fund shortage of non-profit organizations and thus public services were reduced. Meanwhile, economic crisis also brought about social problems such as unemployment, environmental deterioration, etc., which raised the need of public services. Responding to this situation, some traditional non-profit organizations began to utilize market-based approaches to solve these social problems and as a consequence, social enterprises emerged in Europe and United States in 1990's. By now, social enterprise is a growing globe phenomenon.

Since 2004, researches and practices of social enterprise from developed countries have been introduced into China, and some entrepreneurs adopted this mode to perform social activities. Its positive impacts on society and economy attracted a large number of researchers' attention and some of them dedicated themselves into it. However, the current results of these researches are still lagging behind the practice of social enterprise, meaning that the theories cannot offer the practices strong system support, especially in the field of legal system of social enterprise. To address this urgent need, the thesis researches the leading legal theories and practices of social enterprise from western countries, and attempts to establish a social enterprise legal system in China.

The first part of the article displays general context in China, including economy, policy, practice and legislation. It also addresses the important issues, the meaning as well as the methodologies and arrangement of this research.

The second part of this article sorts out the basic theories of social enterprises, including concepts, features, characters and functions. The sort is centered some developed countries in Europe, including Italy, the United Kingdom, Spain and other important research organizations, and the United States; it mainly focuses on the

important issues of the establishment of social enterprise legal system in China and the developed countries that lead the researches and practices of social enterprise in the world.

The third part of this article analyzes the legal systems of social enterprises in the United Kingdom, Italy and the United States, which can be adapted to the realities in China. In addition, their specific regimes, in regard of important legal issues, can serve as reference to the establishment of social enterprise legal system in China.

The last part of this article provides some legislative suggestions based on the combination of experience from the developed countries and realities in China. The sinicization of the experience from other countries should be catered the needs of the establishment, especially the needs of integration of former related laws. The main factors, including purposes, principles, definitions and models of social enterprises should be analyzed before establishing the specific legal regimes of social enterprises. Moreover, legal suggestions of regimes for Specialized Farmers Cooperatives, Welfare Enterprises and People-run Non-enterprise Units are put forward accordingly, as well as some suggestions for other quasi social enterprises on establishing new regimes. Last but not the least, the article analyzes the regimes of supporting measures and regulations, which can provide social enterprises with resources and positive adjustments from external systems.

Key words: social enterprise, legal system, sinicization

1. Forewords

1.1 The context of the research in China¹

1.1.1 The economy context of the research

Since the policy of opening and reform enforced for more than 30 years, China has achieved a great success on the national economy, while the issues in the social scopes have attracted people's attention increasingly, especially the shortage of social services, due to which the developments in the fields of accommodation, medical treatment and employment have incurred the heavy criticism of the people from all social circles. Just because the enforcement of the policy of opening and reform, the obligation of supplying social services, most of which were undertaken by the government organizations before 1978, have been transferring to the market and the third sector. But according to the market and the government failure in the area of public goods, and the premature of the third sector, the public services supplied by them are a far cry from meeting the needs of the people in China.

According to the international experience, the market and the government failure in the area of public goods are not easy to solve, neither in theory nor in practice. Especially in China, to some degree, it depends on the reform of economic system and political restructuring, for whom there will be a long hard way to go. Therefore, to improve the mechanism of supplying social service, the most effective way is to improve and perfect the system of the third sector in China, by the functions of which, the mechanism of supplying social services will be more effective and the social services will meet the needs of the people closer.

Nowadays, the third sector in China doesn't play an important role in the process of supplying social enterprise and goods, due to the main reasons as following: firstly, the third sector lacks of resources for surviving and developing. (Dong Xiaohua, 2012) Secondly, the management in the organizations of third sector is still in a backward state. (Yu Xiaomin, 2011) Thirdly, the third sector are restricted too much. (Yu Xiaomin, Ding Kaijie, 2011) In order to make a big progress in the

¹For convenience, in the research, "China" refers to "Mainland China".

supplement of social service and social goods, these issues should be ultimately solved.

1.1.2 The practice context of the research

According to the plights of the third sector encountering, some innovations, so-called “social enterprise” in other countries and regions, have taken place in the third sector, though there is no specific legislation in China now.

In Beijing, Shanghai, Shenzhen and other cities, some organizations have acted as the model of social enterprise.

Case 1: Beijing Stars and Rain Workshop²

Beijing Stars and Rain, founded in 1993, is a non-governmental educational organization, making contributions to serving children with autism in China. By now, it has helped over 6,000 autistic children, as well as their families by its unique parent-training courses, which train the parents the necessary skills to educate their own children. Recently, it starts a group home for 6 teenagers with autism and related disabilities. Its social purpose also reflects on the charging for the services: it charges the least fee as possible for the autistic families so hardly get help from security system that its development mainly depends on the help from the public and organizations at home and abroad. But there are some difficulties blocking its development. For example, it can't formally registered and thus cannot endow favorable tax policy preference despite it has made such a great contribution to the service of children with autism.

Case 2: Sowosky³

Sowosky is a NGO, serve the social work students with internship opportunities, technique trainings and job-hunting services, and now it has become an important information platform for facilitating communications between job-providers and seekers. For further development, Sowosky plans to develop toward social enterprise, which may charge annual fee from relevant government agencies, NGOs and some

²See Graduate School of Beijing Stars and Rain. “Stars and Rain.” <http://www.guduzh.org.cn/Default.aspx?alias=www.guduzh.org.cn/English>. 2013-06-25 log in.

³See The Net of Qing Yi Social Work. “The Introduction of Qing Yi.” <http://www.sowosky.com/portal.php>. 2013-06-26 log in.

other institutions, for their daily operation cost. However, it lacks the system support and endures the pressure from other quasi state-own organizations.

Case3: Hua Dan Workshop⁴

“Hua Dan Workshop is a social enterprise which enables personal, social and economic empowerment to China’s migrant workers through participation in and leadership of inspirational arts-based projects.” Despite its social purpose, it encounters the shortage of funding resource for further development, due to its single limitation approach that it depends on grants and for profit workshops. What’s more, for it is registered in Hong Kong, it still faces legal problems when working in the China mainland.

Through these cases, at least three points can be derived: firstly, there are some quasi social enterprises have emerged in China; secondly, these organizations are still in their infancy and exploring the suitable roads to develop; thirdly, the same issue faced by most of them is the lack of legal support, due to which they cannot get enough resources to develop and conquer plights.

1.1.3 The policy context of the research

Some important conferences and some main leaders of China have some pronouncements and topics about the innovation of social management. In 2004, the CPC’s Fourth Plenary Session of the Sixteenth Central Committee stressed that China should accelerate the building of the national innovation system and compel the development of businesses of individual and private ownerships businesses. In 2007, at 17th national congress, General Secretary Hu Jintao emphasized the importance to build up social organizations and pointed out that China should improve their functions of social cohesion and public participation. In February of 2011 Xi Jinping made a supplement of the idea of social management of Hu Jintao. In May of 2011, Secretary of the CPC Central Committee Political Bureau Standing Committee, Central Committee of Political Science and Law, Zhou Yongkang, issued an article titled “Strengthening and originating the social management, to establish and perfect the system of social management of the socialism with Chinese characteristics”.

⁴See The Homepage of Hua Dan. “Welcome to Hua Dan.” <http://www.hua-dan.org/2013-06-28> log in.

At the same time, Chinese government has promulgated some instructive opinions. In April of 2011, the CPC Central Committee and the State Council announced the guidance to push forward the reform of institutions on classification. In the June of 2011, “The charity organization management process guidance” was released and it’s the first pertinent guidance in China. In 2012, the State Council brought out guidance to push forward the reform of institutions. In 2013, the Ministry of Civil Affairs emphasized that it will strengthen the supervision on the transparency of charitable organizations. In March of 2013, Premier Wen Jiabao in the “Government’s Report of 2013” brought forward that China should keep on enhancing and innovating of social management, performing the function of self-governing and service of communities in rural and urban areas.

What’s more, as the political reform going on, with the shift of Chinese government from control-oriented administration to service-oriented administration, a large amount of public services has been provided by civil organizations.⁵ Under this context, social enterprises have a very good chance to develop.

Nowadays, in China there is some policy spaces for social enterprises to develop even there is no any special laws to regulate the relevant law relations.

1.1.4 The legislation context of the research

In 2011, even the socialist system of laws with Chinese characteristics has taken shape, but until now, some important laws haven’t been legislated, of which is the law for regulating social enterprises. In practice, there are some main positive laws regulating the organizations in the third sector in China.

In China, according to the views of some scholars, the third sector includes People-run Non-enterprise Units (PNUs 民办非企业单位), Welfare Enterprises, Foundations, Charitable Organization and other social organizations (Kang Xiaoguang, Feng Li, 2011). There are some laws regulating these organizations. In 1998, the State Council of the People’s Republic of China has promulgated “Provisional Regulations for the Registration Administration of People-run

⁵See Culture and Education Section British Embassy, “The general report of social enterprise in China(2008).” http://dsi.britishcouncil.org.cn/images/BC_China_Social_Enterprise_Research_Report.pdf, 2013-04-07 log in.

Non-enterprise Units” “to standardize the registration administration of People-run Non-enterprise Units, protecting the legitimate rights and interests of People-run Non-enterprise Units and promoting the building of socialist material civilization and spiritual civilization.” In 1999, the Ministry of Civil Affairs of State Council promulgated “Interim Measures of social welfare institutions management” to strengthen the management of social welfare institutions and promote the healthy development of social welfare institutions. In 2004, the State Council of the People’s Republic of China has Promulgated “Regulation on Foundation Administration”, as the first article reads, its legislative purpose “is hereby formulated for the purpose of regulating the organizations and activities of foundations, maintaining the legal rights and interests of the foundations, donors, and beneficiaries, and promoting the public organizations to participate in the welfare undertaking.” In 2006, the Standing Committee of the Tenth National People’s Congress promulgated “Law of the People’s Republic of China on Specialized Farmers Cooperatives”, to “support and guide the development of agricultural cooperatives, formulate the organizations and behaviors of agricultural cooperative, protect the lawful rights and interests of the members of agricultural cooperatives, promote the development of the agricultural cooperative. ”

These laws and statutes greatly promoted the development of the third sector. But as the time goes by, they can’t fit the third sector anymore. The situations are listed as following: firstly, the market adaptabilities of some entities in the third sector are too weak. Taking Welfare Enterprises for example, on one side, since the reform of socialist market economy, especially the impaction of the industrial upgrading, faces fiercer and fiercer competition in the market; on the other side, the Welfare Enterprises survived and developed under the protection of government, most of which have small scale, nonflexible systems and lacking of scientific management experience. (Jiang Changshui, Yin Yuchun, Xia Chun, 2012) Therefore, the development of the social Welfare Enterprises is encountering plights. Secondly, some entities in the third sector lack funds to survive and develop. By the November of 2011, the number of social organizations nearly up to 500 thousands, 201 thousands

of which are SFCs; but most of those PNUs lack fixed resources to survive and develop. (Ding Xiaojing,2012) Thirdly, the management of some entities in the third sector is disordered. For example, the scandals of “Guo Meimei” and “One Found” reflect the confused management of charitable organizations, because of which lead to the crisis of credibility of Charitable Organizations.(Deng Guosheng,2011)

To eliminate the obstacles of the development of the third sector, the law system should make a big progress.

1.1.5 The summary

Sorting out the contexts of economy, policy, practice and law above, we know that the current law system cannot address the issues emerged and there are some requirements and advantages to formulate a new law system for social enterprises. In another word, from the research context, the gap between the need of social demands and the current laws in China is very obvious. To resolve the plights, the new law system should meet the requirements listed as followings:

On one side, according to the social enterprises, firstly, it must endow social enterprise a legal identity to take part in the market activities so that social enterprises can acquire some resources to survive and develop through their productive activities; secondly, the law system must provide the social enterprises a mode to perfect their governance and improve the efficiency; thirdly, the law system must offer social enterprise pluralistic channels of getting resources to survive and develop. Because there are different kinds of social enterprises, and their degrees depending on the market and tax preferences are not the same, even the incomes from market fluctuate; they must have diverse channels to get resources.

On the other side, according to the society, firstly, the law system must supply the society with the suitable products and services, which can pertinently satisfy the needs of society; secondly, the law system must supply the society, especially the vulnerable group, with some job opportunities, so as to relieve the severe situation in employment during those years; thirdly, the law system must promote the corporation among government, market and third sector, to motivate resources to supply the society with the suitable products and services.

1.2 The important issues for establishing the legal system in China

Due to the importance of the social enterprise legal system, in many European countries, legal system promotes social enterprises mainly through non-monetary incentives or by regulating organizational model, rather than providing direct monetary support.⁶ This is an adaptable way to relieve the situation that the authority places so much weight on some monetary policies that ignores the function of the creation of a new legal system to deal with the social problems in China. But the social enterprise legal system should be integrated with the realities in China, especially the current related problems in China so that it will play an important role in handling the social problems.

1.2.1 The definition of social enterprise.

Social enterprise is a booming phenomenon in the whole world, but there is no unified definition on social enterprise by far. The definition on social enterprise is more complicated in China. On one side, the social enterprise is at its initial stage with great potential, and what the social enterprise is going to be is still a unconfirmed question in China. What's more, there is no special law to regulate the pertinent relations, and it will decide the authority definition. On the other side, firstly, there are some quasi social enterprises and the definition on social enterprise is hard to contain them all. Secondly, there are plenty of issues requiring social enterprise to address, and the definition will be an obstacle if it is not appropriate.

Meanwhile, the definition on social enterprise is also a very important issue in China. Firstly, the definition of social enterprise will decide the scope of the object and the content of the legal system, which concerns the relation between the new law system and current legal system. Secondly, the definition of social enterprise concerns the relation between social enterprise and other quasi social enterprises in the third sector, which decides the threshold and the scale of social enterprise.

Therefore, the definition of social enterprise in China should consider several factors, in order to make it to be more useful, practice and meaningful: firstly, it

⁶See Antonella Noy. "The Chang Boundaries of Social Enterprises." *Local Economic and Employment Development*, (2009) :26.

should draw a salutary lesson from other advanced countries, especially the western countries. Secondly, it should consider the concrete conditions of China, for example, the issues for social enterprise to address, the operation and so on. Thirdly, it should consider the existing quasi social enterprises, such as Welfare Institutions, PNUs.

1.2.2 The integration of quasi social enterprises by the legal identity

Due to the complicity of the issues to address in China, the new legal system should promote the quasi social enterprises to perform their salutary functions and approbate the legal identity of social enterprise under some conditions. Meanwhile, it also should enable the new social enterprise to form. Therefore, it should be attached importance to the designs of regimes of the establishment, including threshold, legal form, and so on; the scheme of operation, including market activity rules, resource-getting rules, and so on; the scheme of supervision, including authority supervision rules, responsibilities, and so on.

1.2.3 Performing the functions of social enterprise to address the social issues in China.

Nowadays, China has plenty of social issues for social enterprises to address, especially the issues from education, medical treatment, poverty alleviation, and so on. But the connection among social issues is organic, to tackle them ultimately and efficiently, the legal system should deal with the relation between the issues in current and in long-term. Therefore, for the new legal system, firstly, it must deal with the plights which have become the block of development of the society and economy, in other words, it must resolve the plights the third sector encountered. Secondly, it must innovate new ways for social enterprise to get enough resource to survive and develop. Thirdly, it must enable the social enterprise to supply the society with social products and social services.

Therefore, from the perspective of establishing the law system of social enterprise in China, it's very important to draw on the experience of other advanced countries on social enterprise legal system for establishment, especially the following aspects:

Firstly, the admission of social enterprises. This issue stems from the definition

of social enterprise and the integration of quasi social enterprises now in China. Because the admission of the social enterprise in the legal system means giving the legal identity to the organizations, which surely will have a distinct definition of social enterprise in the law. Meanwhile, the current quasi social enterprise will counter the problem of converting into social enterprise and get a legal identity of social enterprise. Therefore, it's important to analyze the admission regime of social enterprise for establishing the social enterprise legal system in China.

Secondly, the financial regime. To address up the issues of performing the functions of social enterprise, financial regime of social enterprises play a very important role. Because the nature of social enterprise is to pursue social goal, and to prevent the social enterprises from violating of the purpose, on one hand, it needs to apply some special measures which can protect the purpose, such as the asset lock regime, multi-stakeholder regime and profit distribution constraint regime. On the other hand, financial regime performs the function of acquiring resource for the development of the social enterprise by providing incentives for the investors. Therefore, the social enterprise can perform continuous activities for the social interests.

Thirdly, the governance regime. The governance relates to the efficiency, the realization of the goal of social enterprise and these two factors mainly decide the performing of the functions of social enterprises. The governance structure is a key element of the governance, concerning the relation among the various members, especially the relation among the assembly, the directors and the accounts auditors. The governance structure relates to the specific forms of social enterprises.

1.3 The meanings of the research in China

1.3.1 The theory meaning

Firstly, introducing and analyzing the basic theory of social enterprise for the research and practice in China

Social enterprise emerged in western countries and then permeated throughout the world. For many years of research and practice, the western countries have accumulated rich and helpful experience in theory and practice, some of which has

established a synthetically system for social enterprise. While the development of society and economy in China needs a new form of social enterprises to address all kinds of issues from society urgently. Therefore, the introduction and analysis of the basic theory of social enterprise will contribute to the relevant research and the establishment of the social enterprise legal system in China.

Secondly, integrating the basic legal theory of social enterprise from western countries with the concrete conditions in China for researching the legal system of social enterprise in China

Although the legal theory and practice of social enterprise in some western countries are fully-fledged and advantaged, the conditions in China are much more different from them and the experience of those countries cannot be applied to the research and the practice in China directly. Meanwhile, the relevant research in China is rather weak and the helpful instructions it can supply the practice with are rarely limited. Therefore, the localization of the legal theory and practice of social enterprise from those western countries is very important for the establishment of social enterprise legal system. What's more, China is in transition and the conditions change quickly, because of which the importance of the localization of the legal theory and the practice of social enterprise from those western countries become much more obvious.

1.3.2 The practice meaning

Firstly, to resolve the plights of the third sector encountered in China

The research tries to draw helpful lessons of legal system of social enterprise from western countries and performs the positive functions of social enterprise to resolve the plights of the third sector encountered in China, break down the barriers of the development of society, especially the quasi social enterprises.

Secondly, to address the issues of shortage of social products and social services

Nowadays, the shortage of social products and social services becomes very serious and it has attracted increasing attention. The research attends to address this issue through establishing a social enterprise legal system. Social enterprises will mobile the resources of the market, the government and the third sector to address this

issue.

Thirdly, to provide suggestions for the establishment of social enterprise legal system in China

After considering the factors of the experience of the legal theory and practice of social enterprise from some western countries, the concrete conditions in China and the development target in current and in long-term, some suggestions will be provided for establishment of social enterprise legal system in China, including the targets, the principles and the key of the legal system, and so on. Those suggestions will contribute to the relevant theory research and practice in China.

1.4 The research methods and the arrangement

1.4.1 The research methods

The study attends to establish a legal system of social enterprise to address the social issues in China. To attain the goal, there are several research methods to use during the course of the study.

Firstly, the method of comparative jurisprudence

The establishment of social enterprise legal system in China needs to learn a salutary lesson from advanced countries. In other words, the study has to research the social enterprise legal system in advanced countries, basing on the related requirements in the course of the establishment of social enterprise legal system in China. And then I choose the best way or a mixture way to work as a sample for China, in order to establish an adaptable legal system for China. On the course of the study, it has to understand the advantages and the shortages of each social enterprise legal system, by the method of comparative jurisprudence.

Secondly, the method of legal hermeneutic

To learn a salutary lesson from advanced countries, firstly we must have a comprehensive knowledge of the legal system of social enterprise of those countries, and then we need to have an exact knowledge of main laws of social enterprise. Therefore, the study of social enterprise legal system needs to make a good understanding of social enterprise legal system of advanced countries by the method of legal hermeneutic.

Thirdly, the method of law and economy

The method of law and economy is a method using the principles and methods of economics to analyze the forms, structures, efficiency and trends of legal systems. Social enterprise originates in economic factor of the development of economy and society, and works as a new form of organization to improve the efficiency of economy and address some social issues. Therefore the substance of social enterprise contains some economic factors and the legal system of it reflects the economic factors. The study of social enterprise legal system should have knowledge of economic factors in it, how the economic factors act in the process of regulating the legal relations, and analyze the form, structure, efficiency and trend of social enterprise legal systems by the method of using the principles and methods of economics.

1.4.2 The arrangement

The method of theme development has been most responsible for shaping the structure and substance of the study. As the research methods have been confirmed, the arrangement of the study has been fixed on also. In chapter one, I focus on the basic theory of social enterprise in advanced countries and regions, including the concepts, the features, the characters and the functions in the U.K, Italy, Spain, the U.S.A, and so on. In chapter two, I focus on the legal systems of advanced countries, including the admission regimes, the finance regimes and the governance regimes in the U.K, Italy, Spain, and the U.S.A. In chapter three, I attend to provide some suggestions on the establishment of the social enterprise legal system in China. The key point of the establishment of the legal system is the sinicization of the advanced theories and experience of legal practice, thus the analysis of the reality in China is also very important. After those researches, a conclusion will be draw for the research.

2. The basic theory of social enterprise

Social enterprise is still a new phenomenon in China and people don't know what exact meaning of it, including the concept, the function, the evolution, and so on. Therefore, it needs to introduce some basic theory of social enterprise, not only for paving the way for the study but also for the requirement of clarification and summary of some questions in the research of this thesis in China.

Establishing the legal system of social enterprise in China needs to learn a lesson from the advanced countries and abide impersonal law of the development of social enterprise. Therefore, examining the basic theory of social enterprise has to choose the right countries where the social enterprise is well-developed and attempt to find the impersonal law of the development of social enterprise.

As we know, the theory and practice of social enterprise first emerged in European countries and the U.S.A, and the social enterprises made a great success in dealing with the social problems and the research in these regions takes the lead of the world. Considering the exact needs of China, the critical points, the difficult points of the establishment of social enterprise legal system in China and the homogeneity of the social problems between the sample and China, I choose some sample countries, including the U.K, Italy, Spain, and the U.S.A to analyze the basic theory of social enterprise.

In this chapter, I want to sort the important theory of social in some advanced countries and analyze them from a standpoint of the concrete conditions in China, for the theory preparation of the establishment of the social enterprise legal system in China.

2.1 The concept of social enterprise

On the whole, the emergence and subsequent spread of the social enterprise concept among scholars, due to both the public and private sector's inability to meet the needs and choices of a civil society differentiated in terms of income, education, ethical context, and ideology. (Salamon, 1997) Yet there is no uniform definition of social enterprise throughout world, on the account of not only the exact forms of

social enterprise in each country are different, but also the concrete conditions in those countries are various. The meaning of studying the concept is to have a good understanding of social enterprise and induce the common point of social enterprise, by which contribute to the identification of social enterprise in China. What's more, it will be helpful for limiting the scope of the research.

2.1.1 The concept of social enterprise in Europe

Though the practice of social enterprise spread the whole Europe, but there is no consent concept about this term. Just as the opinion of Antonio Thomas, “the term ‘social enterprise’ is a theoretically ambiguous concept used, in Europe, to refer to volunteer organizations, to a certain number of standard cooperatives providing care, and to some joint stock or private limited companies characterized by the development of an entrepreneurial spirit directed to reach social aims.” (Antonio Thomas, 2004) This point of view contains two meanings: one is the form which the social enterprise has and the other is the essence the social enterprise contains. Exactly, the concept of social enterprise can be drawn from different ways and the emphases are different.

Europe is the birthplace of modern social enterprise, where the concept arose out of traditional concepts of social cooperatives, some popular legal structures for social enterprise.⁷ By the traces of the development of social enterprise in Europe, some related laws still can be found. In the western European countries, the concept of social enterprise is roughly drawn along the same way of division but with some variations within the two streams of thought and less distinction between practitioners and academics: one stream of thought emphasize the social entrepreneurship dynamic developed by firms that seek to enhance the social impact of their social productive activities; the other stream limits the analysis to the scope of social enterprises belonging to the third sector, including social cooperatives. (OECD, 2003) The two streams of thought stem from two original forms of social enterprise which have their special characters.

⁷See Esposito, Robert T. “The social enterprise revolution in corporate law: a primer on emerging corporate entities in Europe and the United States and the case for benefit corporation.” *William & Mary Business Law Review* 4.2 (2013).

The general survey of the concept of social enterprise in Europe is not clear enough to get the exact meaning of it. Yet in different countries and regions, the concepts have different connotations, denotations and characters.

2.1.1.1 The concept of social enterprise in Italy

The concept of social enterprise first appeared in Italy in 1990. (Carlo Borzaga, 2010) In 1991, as the pioneer, Italian parliament approved Law 381/1991, introducing a specific legal form of social enterprise for “social cooperatives”, in response to needs that had been inadequately met or not met at all by public services or private enterprises, which make a great positive impact in Italy work as a pioneer in Europe, (Borzaga & Santuari, 2001) by now, social cooperatives are the most widespread social enterprise entities in Europe. The law provided in Article 1: social cooperatives have as their purpose the pursuit of the general community interest in promoting human concerns and in the social integration of citizens by means of: a) the social cooperatives that carry out activities in the area of health, social or educational services; b) the social cooperatives that act as firms for integrating disadvantaged people in the labor market.⁸ According to the law, the social cooperatives are divided into two categories, in terms of two types of activity, and the purpose of them are limited in pursuing the general community interest. Thereby this definition contains three elements: firstly, it must adopt the legal form of cooperative; secondly, it must have the purpose of pursuing community interest; thirdly, it must perform activities in two limited scopes.

The main difference between the forms of social cooperative aforementioned and the traditional cooperative in Italy is that: the former mainly serves the members of them, while the latter pursue the general interest of local communities or the social integration of citizens.

As the effect seen in a few years, Law 381/1991 gave a great impetus to the development of social cooperatives, which have registered an average annual growth rate ranging from 10% to 20% percent; in 2005, there were over 7,300 social

⁸See Borzaga, Carlo, and Alceste Santuari. “Social enterprises in Italy: the experience of social co-operatives.” ISSAN Working Papers 15 (2000).

cooperatives; they employed 244,000 workers.(Carlo Borzaga, Giulia Galera and Flaviano Zandonai, 2008) Meanwhile, besides the social cooperatives, there are still many organizations belonging to the third sector, which perform almost the same functions as traditional social cooperatives yet do not endow the same legal eligibility as social enterprise, and are at a disadvantage when compete with the traditional social coops.

Therefore, in 2005, a new law on social enterprise (Law 118/2005) has been adopted by Italian parliament, which “crosses the boundaries of legal and organizational forms, enabling various types of organization (not only cooperatives and traditional non-profit organization but also investor-owned organizations, for instance) to the legal form of social enterprise, provided them with the non-distribution constraint and organized the representation and participation of certain categories of stakeholders, including workers and beneficiaries.”⁹

In this law, it made a specific definition of social cooperative in Article 1: “Social enterprises are understood as the private non-profit organizations that perform continuously and mainly economic activity of production or exchange of goods and services of social utility, aimed at achieving general interest goals.” And then, it defines the nature and the requirements of social enterprises from following aspects: the field of activities, the total distribution constraint, the obligation to reinvest, the obligation to write and make public the social and economic balance sheets, the obligation to devolve the remaining assets to other organization in case of suspension, the obligation to register into the enterprises’ book, the establishment of competition procedures applicable in case of bankruptcy, the representation on trial by the managers and the limited liability of the enterprise, the establishment of control bodies, the forms of activities, the regulation of the transformation, mergence and transfer of the respective enterprise to other social enterprises, the consequences on the qualification and on the regulation of the social enterprise, etc. These limitations ensure the nature of social enterprises and specify the definition of social enterprises.

⁹See Jacques Defourny,Marthe Nyssens(eds.) “Social enterprise in Europe: receipt recent trends and developments.” WP 1 (2008).

According to the laws and the development of the law, two features can be extracted from them: one is the social enterprises in Italy define from two angles: the first is the scope of activity of social enterprises, and the other is the function of work integration; the second is the scope of the social enterprises is becoming bigger as time goes by.

After formulating the criterion of identification, the two kinds of social enterprises obtain the “legal brand”, and have a privilege to tax advantages, government procurement and donations, etc. Therefore, the social enterprises get an impetus to develop and perform many social functions, which make a great contribution to the social economy. What’s more, as the first county to legislate laws of social enterprise, its experience of the research and practice is learn by other European countries, even throughout the world.

2.1.1.2 The concept of social enterprise in the United Kingdom

In the UK, the Parliament approved a law, named “Companies (Audit, Investigations and Community Enterprise) Act 2004”, creating the “Community Interest Company(CIC)” in 2004. Even in 2002, the central government’s Department of Trade and Industry (DTI) gave a concept of social enterprise, which states that:

“Social enterprises are part of the growing ‘social economy’. The social economy is a thriving and growing collection of organizations that exist between the traditional private sector and the public sector. Sometimes referred to as the ‘third sector’, it includes voluntary and community organizations, foundations and associations of many types. A social enterprise is a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximize profit for shareholders and owners.”¹⁰

This concept points out the adscription of social enterprise and pays an attention to the social objectives, which emphasizes the surpluses reinvested for that purpose in the business or in the community, meanwhile, the forms of social enterprise are

¹⁰See Jacques Defourny, Marthe Nyssens(eds.) “Social enterprise in Europe: receipt recent trends and developments.” WP 1 (2008).

various. It points out the most important difference of social enterprise from other business organizations. The conception is the most influential, not only because of its official context but also because of its general adaptabilities. In other words, it contains the connotations and denotations of social enterprise, by which someone can identify social enterprise from other organizations, especially the business organizations and other organizations in the third sector.

Besides the official definition, some other concepts were developed by other organizations. The West Midlands Social Economy Partnership (WMSEP) defines social enterprise as “a collective term for an organization that is driven by particular social and community values, whilst aiming to operate effectively and sustainably within a competitive business framework i.e., helping the community as well as maintaining a viable business”. (WMSEP, 2004) Compared with the concept put forward by DTI, this concept emphasizes the realization of particular social and community values, in the condition of competition. It exactly fits the form of CIC, an important form of social enterprise established in the UK in 2004.

Compared with the concept of social enterprise in Italy, the UK has its distinctness. Different from the Italian emphasis on its specific governance regime, with a requirement to involve representation and participation of stakeholders, workers, customers, or beneficiaries; while the UK regime sheds light on the business character of social enterprise that a significant part (usually 50%) of the total income must be from market transaction which will be a quantification of “social enterprise”, despite there is no reference to the percentage of market resources in the definition but it is widely accepted.¹¹

There are some other concepts put forward by other organizations, for example, the EMES¹² definition and that of Social Enterprise Coalition (SEC), which are attracting increasing interest throughout the world.

2.1.1.3 The concepts of social enterprise in Spain

¹¹ See Defourny, Jacques, and Marthe Nyssens. “Social enterprise in Europe: recent trends and developments.” *Social enterprise journal* 4.3 (2008): 202-228.

¹² The EMES, “the Emergence of Social Enterprise in Europe”, it’s a project has been conducting research on social enterprise in European Union countries financed by European Commission by 1996.

In Spain, the social enterprise, like in the UK, is a part of “social economy” which is a group of economic and business activities pursue either the collective interest of their members, or the general economic and social interest, or both. In 1999, a national law created the legal form of “social initiative co-operative” (*cooperativa de iniciativa social*), the legal form serve for any type of co-operative providing social services or operating some economic activities aiming at the work integration of socially excluded persons;¹³ the legal form of “social initiative co-operative” is the specific form of social enterprise. What’s more, because of the decentralization of competence that characterizes the territorial of the social economy, the regulation of which is also located in autonomous regional areas, the need of unifying the forms of social enterprise emerged. In 2011, by Law 5/2011, a common legal framework for all social economy entities was set by Spain, including “cooperative societies, mutual societies, foundations and associations that carry out economic activities, labour societies, socio-labour insertion companies, special employment centers, fishermen’s guilds and agricultural transformation companies”¹⁴. That’s to say, the scope of forms of social enterprise has expanded, and a common legal form for social enterprise has been established.

In Spain, as in Italy, the concept of social enterprise is defined from two angles: one is the scopes which its activities should be carried out; the other is the target of social integrations. Also, as the time goes by, the needs of enlarging the scope of social enterprise appear.

2.1.1.4 The concepts of social enterprise defined by EMES.

According to the concepts defined by Italy, the UK and Spain, the differences are not very obvious, and the same points of them worth paying attention to. The consequence of research given by the EMES has a consensus among many researchers throughout the world, which fills a gap in the literature on social enterprise from a European comparative perspective.

¹³See Defourny, Jacques, and Marthe Nyssens. “Social enterprise in Europe: recent trends and developments.” *Social enterprise journal* 4.3 (2008): 202-228.

¹⁴See Social Economy Europe .“Spain introduces Law on Social Economy.” *Social Economy Europe*, <http://www.socialeconomy.eu.org/spip.php?article1390>. 2013-06-09 log in.

In the light of the EMES, social enterprise is a not-for-profit organization that provides goods and services directly related to their explicit goal of benefiting the community, the criteria of which are more economic and indicators that are predominately social.(Defourny & Nysseens,2008) The explicit criteria are divided into two dimensions: the economic dimension and the social dimension. The economic dimension includes four criteria and listed as following: a) A continuous activity producing goods and/or selling services; b) A high degree of autonomy; c) A significant level of economic risk; d) A minimum amount of paid work. The social dimension includes five criteria: a) An explicit aim to benefit the community; b) An initiative launched by a group of citizens; c) A decision-making power not based on capital ownership; d) A participatory nature, which involves various parties affected by the activity; e) A limited profit distribution. (Defourny, 2001) The criteria are recognized by the scholars from many countries and made a big impact on the research and practice of social enterprise in the world.

According to the definition, social enterprise is a non-profit organization that provides goods and services on the behalf of their explicit goal of benefiting community. (Medford & Massachusetts, 2008) Generally, they rely on the collective dynamics involving various stakeholders in their governing bodies, and they place a high value on independence and economic risk-taking related to ongoing socioeconomic. (Defourny & Nysseens, 2008) Therefore, a balance between the social dimension and the economic dimension is needed, which will sustain a social enterprise to keep developing and performing positive social and economic functions.

On the whole, as the points of view of some scholarships, the definition of social enterprise is so “ideal type” that social enterprises do not precisely adhere to it. But it points out the criteria of social enterprise and the connection between economic criteria and social criteria. And the framework can be used to do some concern research and set some systems even the explicit criteria which connect to different countries and regions are not the same.

2.1.1.5 The concepts of social enterprise defined by Euricse¹⁵

Meanwhile, in scholarly circles, some scholars proposed their concepts of social enterprise, among which is the concept proposed by Borzaga and Defourny, influencing Italy even the whole Europe. They considered social enterprise as a concept aiming at shedding light on particular dynamics of both traditional non-profit organizations and cooperatives, which named collective entrepreneurial dynamics focused on social aims. (Borzaga & Defourny, 2001) In 2008, Giulia and Borzaga emphasized that the social enterprise partially overlaps the non-profit sector, social economy, third sector, and social entrepreneurial. To be precise, it excludes one of the most relevant components of the non-profit sector, including displaying either an advocacy or redistributive role; and also excludes the component of social entrepreneurship that is represented by profit-seeking businesses engaged in social initiatives, especially those initiatives that produce goods and services, which are not socially relevant, but make use of their profit for pursuing social objective. (Giulia & Borzaga, 2008) Even more, in 2013, Carlo Borzaga proposed that the definition of social enterprise on the base of the definition elaborated by the EMES can be more precisely structured rounding three axes: the economic-entrepreneurial, the social, and the ownership-governance. (Carlo Borzaga, 2013) The opinions of Euricse trace the development of social enterprise and are more reasonable according to the reality and the history in Europe.

The criteria of economic-entrepreneurial dimension that the social enterprises have to satisfy listed as follow:

- “a. continuous activity producing goods or providing services;
- b. at least the partial use of costly production factors;
- c. a high degree of autonomy and hence a significant level of economic risk.”

For the social dimension criteria, the social enterprises have to fulfill two points:

- “a. explicit social aim of serving the community or a specific group of people;
- b. the production of goods/services that are characterized by a general-interest or

¹⁵ Euricse (European Research Institute on Cooperative and Social Enterprises) is a research centre designed to promote knowledge development and innovation for the field of cooperatives, social enterprises, commons and nonprofit organizations.

meritorious nature.”

And the ownership-governance dimensions that the social enterprises should satisfy are:

- “a. collective dynamics involving people belonging to a community or to a group that shares a certain need or aim;
- b. a decision-making process not based on capital ownership;
- c. representation and participation of customers, stakeholder orientation, and a democratic management style;
- d. a total non-distribution constraint or a partial non-distribution constraint such that the organization distributes profits only to a limited extent, thus avoiding profit-maximizing behaviors.”

(Carlo Borzaga, 2013)

Compared with the definition of EMES, this is more specific and practical, and gives more attention to the elements of the governance, the substantiation of the social dimension and the real social enterprise in the realities. Therefore, the definition will be more specific and practicable.

2.1.1.6 The summary of the concept of social enterprise in Europe

According to social enterprise, in different countries and regions there are different legal structures. In Europe, social enterprises have the forms as employee development trusts, social firms, intermediate labor market organizations, community businesses, or charities’ trading arms. (OECD, 2003) What’s more, on one hand, because the degree of development in economy, society and culture, the practice and research of social enterprise in each country have its respective way; on the other hand, as the time goes by, social enterprise in Europe countries has influenced each other and reflected a region character, because the impulse of EU and the development of Europe integration.

Specifically, among the concepts of social enterprise in Europe, the concept defined by EMES is the most reasonable and flexible, according to the development of social enterprise and the reality in Europe, despite it is a little ideal. The reasons are listed as follow:

Firstly, it contains major conditions that social enterprise should be satisfied. The concept defines the social enterprise from the both aspects of economy and society, which include the main elements with which social enterprises will pursue their social purposes in their daily activities: the economic dimension is similar to the features of for-profit corporation and the social dimension has a likeness of non-profit organizations.

Secondly, the dimensions of economy and society are in detail, and very easy to measure whether the organizations are social enterprise in the situations of each country or region. Besides the elements of for-profit corporations and non-profit organizations, the definition emphasizes the governance of the social enterprises and makes a strict rule over it. For example, the definition states the rule about the involvement of different stakeholders in the government of the social enterprises, for instance, the representation and participation should be from different parties of the activities, which probably may be workers, customers or other beneficiaries. The researchers and practitioners from other parts of world can use the criteria to measure the organizations whether are social enterprises and make the rules to identify the social enterprise.

Thirdly, the definition catches hold of the nature of the social enterprise that pursuing the social goals in business way. For example, the definition integrates the principle of “a limited profit distribution”. This criterion works as a feature of the definition, and prevents social enterprises from becoming for-profit corporations, which is very important to keep the social nature of the social enterprises.

Apart from the criticisms aforementioned that the definition is a too “ideal model”, there are still some disadvantages of this definition. Firstly, as the opinion of Bacchiega and Borzaga, the concept of “multiple stakeholder ownership” have been developed that different kinds of stakeholders can participate the assembly, including beneficiaries, employees, volunteers, public authorities and so on. This dynamic, on one hand, the governance structure of the social enterprise will be affected by the change of the composition of the stakeholder ownership; on the other hand, more and more social enterprises are found by different kinds of stakeholders, which will

mobile more social resources for the development of social enterprises. Secondly, as the mentioned in the debates in the U.S.A and the U.K, it's no need to emphasize the importance of the trading activities, because of the trend that the social enterprises can get more resources from other channels, like public subsidies, voluntary resources obtained for the hybrid of the social resources.¹⁶

Despite of the disadvantages of the definition of social enterprise defined by EMES, it's still the profound impact definition in Europe, and researched by plenty of scholars from the whole Europe, even from the other part of the world.

2.1.2 The concept of social enterprise in the U.S.A

As the situation in the Europe, there isn't a general consent to the concept of social enterprise in the U.S.A. But in general, concept of social enterprise in the U.S.A is much broader and more focused on enterprise for the sake of revenue generation than definitions elsewhere¹⁷.

In 2001, Dees divided enterprise into three types: those purely philanthropic, those hybrids (related to social matters) and those purely commercial. For distinguishing the three types of the enterprise, he set elements of them and make model as following:

¹⁶See Kerlin, Janelle A.ed. "Social enterprise: A global comparison." UPNE, (2009):15–16.

¹⁷See Janelle A. Kerlin. "Social Enterprise in the United States and Europe: Understanding and Learning from the Differences." Springer Voluntas 17 (2006):247–263.

| | Pure Philanthropic | Hybrid | Pure commercial |
|-------------------------------------|---|---|--|
| Motives | Appeal to goodwill | Mixed motives | Appeal to self-interest |
| Methods | Mission-driven | Balance of mission and market | Market-driven |
| Goals | Social value creation | Social and economic value creation | Economic value creation |
| Destination of income/profit | Directed toward mission activities of the non-profit organization(required by law or organizational policy) | Reinvested in mission activities or operational expenses, and/or retained for business growth and development(for-profits may redistribute a portion) | Distributed to shareholders and owners |

Table 1: Spectrum of practitioners¹⁸

Based on the division of enterprise by Dees and the model made by Etchart and Davis in 1999, in 2007, Alter gave specific division of Hybrid Spectrum of enterprises by the criteria of their different objectives, which contained the notion that Hybrid Spectrum of social should be divided into four types:

- 1 non-profit with income-generating activities;
- 1 social enterprises;
- 1 socially responsible businesses;
- 1 corporation practicing social responsibility.

More specifically, it can be illustrated as the follow:

18 Claudio Travaglini, Federrica Bandini, Kristina Mancinone as adapted form Alter K.(2007); from Dees G.J.(2001)and Etchart and davis(1999).
http://www.researchgate.net/publication/228263401_An_Analysis_of_Social_Enterprises_Governance_Models_Through_a_Comparative_Study_of_the_Legislation_of_Eleven_Countries. 2014-05-31 log in.

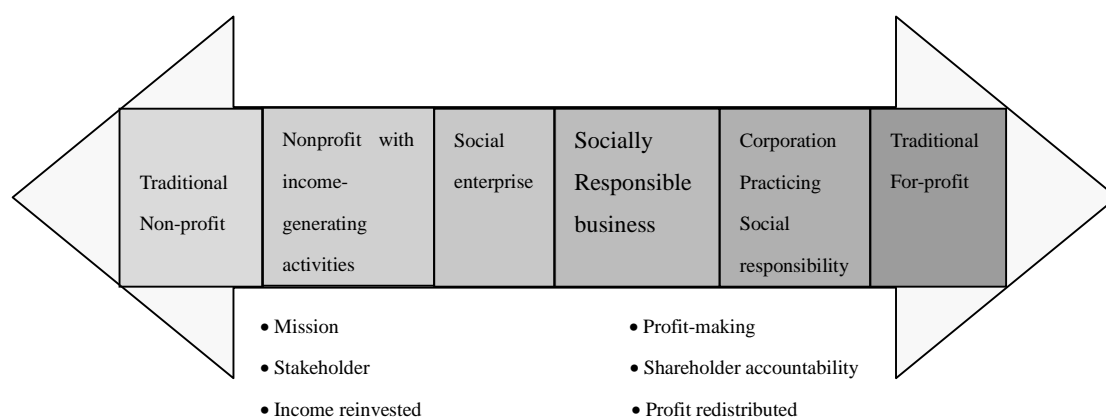


Figure1: the Hybrid Spectrum of enterprises¹⁹

As the figure showing, the two extreme aims of the Hype Spectrum of enterprise: the aim on the left side of the spectrum is social value, and the aim at the right side of the spectrum is to create economic value for the shareholder. The social enterprise is just in the middle of the spectrum.

Around 2008, the scholars about the definition of social enterprise broke into two parts: academic groups and practitioner-oriented groups. The former combined nonprofit and business forms of social enterprise, and the latter insisted that social enterprise just carry out nonprofit activity.

In the practitioner-oriented groups there are some different opinions. The concentrated diverge is the subject of the social enterprise. Jerr Boschee, from the groups of practitioner-oriented, considered that social enterprise is any organization, in any sector, that uses earned income strategies to pursue a double bottom line or a triple line, either alone (as a social sector business) or as a part of a mixed revenue stream that includes charitable contributions and public sector subsidies.²⁰ While some practitioners insisted that the subjects of social enterprises should be narrowed in the scope of individual social entrepreneurs, nonprofit organizations, or nonprofits in association with for-profits. For example, the Social Enterprise Magazine Online

¹⁹See Claudio Travaglini, Federrica Bandini, Kristina Mancinone as adapted form Alter K.(2007); from Etchart and Davis(1999). "An Analysis of Social Enterprises Governance Models Through a Comparative Study of the Legislation"

http://www.researchgate.net/publication/228263401_An_Analysis_of_Social_Enterprises_Governance_Models_Through_a_Comparative_Study_of_the_Legislation_of_Eleven_Countries. 2014-05-31 log in.

²⁰ Boschee, Jerr. "For social entrepreneurs." <http://www.socialent.org/pdfs/StrategicMarketing.pdf>, 2014-03-08, log in.

gave the conception of social enterprise is “Mission oriented revenue or job creating projects undertaken by individual social entrepreneurs, nonprofit organizations, or nonprofits in association with for-profits.”²¹ Even more, the Social Enterprise Alliance gave a more narrow definition as “Any earned income business or strategy undertaken by a nonprofit to generate revenue in support of its charitable mission.”

But in the academic circle, some scholars consider that social enterprises refer to the organizations that “fall along a continuum from profit-oriented businesses engaged in socially beneficial activities (corporate philanthropies or corporate social responsibility) to dual-purpose businesses that mediate profit goals with social objectives (hybrids) to nonprofit organizations engaged in mission-supporting commercial activity (social purpose organizations).”²² Dennis Young, from the academics groups, hold the notion that social enterprise should perform the activity intended to deal with social goals by the operation of private organization in the marketplace. (Dennis Young, 2008) This definition supported by some scholars from business schools and universities, such as the Social Enterprise Initiative at Harvard Business School, the Center for the Advancement of Social Entrepreneurship at Duke University’s Fuqua School of Business, and the Research Initiative on Social Entrepreneurship at the Columbia Business School.²³

Later, the two groups made a compromise: making a broader definition of social enterprise that includes both nonprofit and business forms. They defined social enterprise as a variety of forms, including profit-oriented businesses engaged in sizable social commitments (corporate philanthropies), dual-purpose businesses that mediate profit goals with social objectives (hybrids), nonprofit organizations engaged in mission-supporting commercial activity (social purpose organizations, for-profit subsidiaries of nonprofits, nonprofit business partnerships, etc.). (Medford & Massachusetts, 2008)

²¹See Kerlin, Janelle A. “Social enterprise in the United States and Europe: Understanding and learning from the differences.” *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 17.3 (2006): 248.

²²See Kerlin, Janelle A. “Social enterprise in the United States and Europe: Understanding and learning from the differences.” *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 17.3 (2006): 248.

²³See Kerlin, Janelle A. “Social enterprise in the United States and Europe: Understanding and learning from the differences.” *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 17.3 (2006): 248.

In 2009, the Social Enterprise Alliance removed the nonprofit from its definition and consider that the term “social enterprise” refers to “an organization or venture that achieves its primary social or environmental mission using business methods”, (Social Enterprise Alliance, 2009) although the vast majority of its members from nonprofit social enterprises. Some scholars also hold the same opinion. For example, Raz, Keren G considered that, “social enterprise is an organization or venture that advances a social mission through entrepreneurial, earned-income strategies that generate revenues from the sale of products or from other activities”.²⁴

In summary, as the point of view of Medford and Massachusetts, “though there have not been consensus around a single definition of social enterprise in the U.S.A, there exists an increasing agreement that social enterprise involves socially beneficial, market-based activities undertaken by both nonprofits and for-profits.” (Medford & Massachusetts, 2008) Yet, as the some specific social enterprise legal forms emerged, such as Low-profit Limited Liabilities Company (L3C) and Social Purpose Corporations (SPCs), the concept of social enterprise is specific and have various of legal definitions.

2.1.3 The comparison of the concepts between Europe and the U.S.A

Because of the diverse contexts of economy, society and culture, the concepts of social enterprise in Europe and the U.S.A are different. And due to the connecting of economy, society and the enhancing of the integration process of Europe among the European countries, the concepts of social enterprise in European countries have some marked differences from the definitions in the U.S.A.

Firstly, the profit distribution. the U.S.A nonprofit concept does not allow any profit distribution while the European concept allows at least some mainly due to the inclusion of cooperatives in the concept,²⁵ but generally, the profit distributions of social enterprise in Europe have some constraints, such as the CIC which has an Asset Lock regime to limit the distribution.

²⁴See Raz, Keren G. “Toward an Improved Legal Form for Social Enterprise.” NYU Rev. L. & Soc. Change 36 (2012): 286.

²⁵See Janelle A. Kerlin. “Social Enterprise in the United States and Europe: Understanding and Learning from the Differences.” Springer Voluntas 17 (2006):249.

Secondly, the sector which it belongs to. In Europe, social enterprise is considered to be a part of the “social economy” which is stimulated by the social benefit and mainly refer to cooperatives, mutual organizations, associations, and foundations.²⁶ In the U.S.A, the term “social economy” is not used and some nonprofit organizations are viewed as social enterprises that operate in the market economy.²⁷ Therefore, in the U.S.A, at the beginning, social enterprise is a term used for entrepreneurs to realize the social goal, and in a long time, there is no specific form for social enterprise so that the entrepreneurs have no choice but to select traditional for-profit corporation forms to perform social activities until 2008, when the first legal form for social enterprise was carried out in Vermont state.

Thirdly, the composition of the social enterprise. The social enterprises in Europe shed light on the participation, as well as the management of social enterprises, which concerns the governing bodies that made up by stakeholders, beneficiaries, employees, volunteers, public authorities, and donors among others; While in the U.S.A, the formal democratic management style is not a requirement of social enterprise.²⁸ This mainly stems from the different forms of social enterprise: in Europe, the cooperative is the most popular form which characterize by “mutual purpose”, for example, the cooperative in Italy, and it relies on the members; while the form of social enterprise mainly by the form company, and it has the legal structure as the normal company.

Fourthly, the specific legal forms of social enterprise. In Europe, except the U.K, social enterprise usually refers a social cooperative or association that provides employment or social services. In the U.S.A, the term “social enterprise” generally means any type of nonprofit involved in earned income generation activities. While in the U.S.A, there are numerous worker cooperatives that are similar to European social cooperatives, but these entities have not been included in the concept of social

²⁶See Janelle A. Kerlin. “Social Enterprise in the United States and Europe: Understanding and Learning from the Differences.” Springer *Voluntas* (2006) 17:249.

²⁷See Janelle A. Kerlin. “Social Enterprise in the United States and Europe: Understanding and Learning from the Differences.” Springer *Voluntas* (2006) 17:249.

²⁸See Janelle A. Kerlin. “Social Enterprise in the United States and Europe: Understanding and Learning from the Differences.” Springer *Voluntas* (2006) 17:250.

enterprise.²⁹

The differences mainly stem from their different cultural backgrounds and different historical contexts in which the concept of social enterprise developed in Europe and the U.S.A.

The cultural background of social enterprise is the profound reason of the differences. According to Luigino Bruni and Stefano Zamagni the main culture contexts of social enterprise emerged in the U.S.A and in Europe are different. In 20th century, in the U.S, the Anglo-Saxon is the main economic and social thought, which is based on the principle of individual freedom and a sharp distinction-separation between the rules of market and its solidarity: “business is business and what is associated to solidarity is something that does not belong to the economic domain.”(Luigino Bruni and Stefano Zamagni,2013) Since the effect of this culture, philanthropy tends to be the main link between the world of business and that of solidarity, while the non-profit sector is a consistent economic and social expression of the humanism. Meanwhile, in Europe, the link between market and society has been built by the Latin-catholic economic and social culture by connection of the community and the boundary. (Luigino Bruni and Stefano Zamagni, 2013) That’s to say, the economic dimension has embedded into the community.

Comparing the two model, in the former one, business is business and philanthropy focus on the social dimension; in the latter one, business are not only business, because that “strong communitarian ties have always impeded market and firms from being really distinct-let alone separated-from both community and society.” (Luigino Bruni and Stefano Zamagni, 2013) The religion reason mixed with other history, culture and social reasons compose the complicate context in which the social enterprise grows up.

The history of development of social enterprise in the U.S. also makes the difference between them.

In the U.S.A, the religious and community groups perform the commercial

²⁹See Janelle A. Kerlin. “Social Enterprise in the United States and Europe: Understanding and Learning from the Differences.” Springer *Voluntas* 17 (2006):251.

activities by the form of bazaars and sold homemade goods to supplement voluntary donations. (Crimmins & Keil, 1983) In 1970s, the term “social enterprise” was firstly utilized to define business activities nonprofits to created job opportunities for the disadvantaged. (Alter, 2002) Then the term “social enterprise” was broadened to define the activities that nonprofits supply some social services when the government reduced the fund because of the crisis, before which the poverty programs, education, health care, community development, the environment, and the arts were invested by the federal government. (Hodgkinson et al., 1992; Salamon, 1995; Young, 2003b; Janelle A. Kerlin, 2006) As the time goes by, the “social enterprise” expanded to refer to the organizations that perform almost all kinds of commercial activities undertaken for the social benefits, due to the situation that commercial activities performed by the non-profits have become the main financial channel of the provision of services. (Janelle A. Kerlin, 2006) The origin of social enterprise deices the nature of it in the U.S.A and it is also the main reason of not allowing any profit distribution in the U.S.A.

While in Europe, due to the economy crisis from 1970s to 1990s, many European welfare states fell into the crisis, along with the reduction in social services and dramatic rise in unemployment that were supplied by the states before. (Defourny, 2001) To satisfy needs of social services, the solutions for “housing issues experienced by increasingly vulnerable groups, childcare services to meet new needs resulting from socio-economic changes, new services for the elderly given the rapid aging of the population and changes in family structures, urban regeneration initiatives, and employment programs for the long-termed unemployed,” were carried out by social enterprise. (Nyssens & Kerlin, 2005) Plenty of new social enterprises emerged and made a great contribution to alleviate the negative effect of the crisis and the economic resurgence. Different from former time, the sponsors of the social enterprise were “social workers, associative militants, and representatives of more traditional third sector organizations,” founding the social enterprises in mainly in the 1980s. (Nyssens & Kerlin, 2005) For this reason, most of social enterprise had fewer resources from the government or other institutions to support. What’ more, for

the particular areas where social enterprises tended to perform the social activities and the welfare state had just retreated from, the resources for the development of social enterprises are mainly from the society, as well as little resources from the state. (Janelle A. Kerlin, 2006)

The history of the developments of social enterprise both in the U.S.A and the Europe reflects different social contexts of theirs, which explains the origins of social enterprises and the natures of social enterprise.

2.1.4 The concepts of social enterprise defined in China

In china, social enterprise is still in an embryonic stage, even there is no common consent that whether the really social enterprises exist in China. The main opinions about the concept of social enterprise in China can be listed as follow:

Some scholars consider that there are some social enterprises in China, even the concept of it, despite there are no special law about it. Yu Xiaomin, Zhang Qiang and Lai Zuofu consider that it's difficult to define the concept of social enterprise because that the development of social enterprises in China is still in the primary stage, but it can be broadly defined as "the business and economic activities driven by social goals."³⁰ Jin Jinping considered that despite there is no specific provision about "social enterprise" in law, but they emerged long time ago, and the typical ones are PUNs and Welfare Enterprises.³¹

While some other scholars hold different opinions. Deng Shengguo considered that, in China, there is no real social enterprise, according to the exact meaning of social enterprise from western countries. (Deng Shengguo, 2010)

According to the developments of social enterprises in the advanced countries and China's current national conditions, on one hand, the concept of social enterprise shouldn't be applied mechanically to China; on the other hand, the quasi social enterprises, such as PNUs, Welfare Enterprises, are just the embryonic forms of social enterprise and not the real social enterprise according to the normal definitions

³⁰See Yu Xiaomin, Zhang Qiang and Lai Zuofu. "The Chinese social enterprises in the perspective of international comparison." *Comparative Economic & Social Systems*, 2011(1):158.

³¹See Jin Jinping. "Legal Myth on Emergence of Social Enterprises in China." *Comparative Economic & Social Systems*, 2009(4):129.

of social enterprise, especially the definitions in the advanced countries and regions. Therefore, it's difficult to make an exact concept of social enterprise in China for their being in the elementary staged. But for the guiding to the development of social enterprise in China and establishing a legal system for it, the specific concept of social enterprise should be defined.

Firstly, the nature of the social enterprise in China should be the same as the normal social enterprise in advanced countries and regions. For the most places in the world, the nature of social enterprise is: pursuing the social goal by the form of business or economic activities. Despite the legal forms of quasi social enterprise in China are different, but the nature of them is almost the same; that's why these organizations related to the social enterprises in other countries and regions, not only the nature, but also the functions and purposes to establish them.

Secondly, the key criteria of social enterprise should be almost the same as the definition defined by EMES. As aforementioned, the definition of social enterprise defined by EMES has made a great impact in Europe, event in the world, and the reasonable elements should be taken into account of the definition in China, which will be made some changes in the light of China reality. The definition also should be divided into two dimensions: economic dimension and social dimension.

On the aspect of economic dimension, it should be listed as:

a) A continuous activity producing goods and/or selling services. Despite the resources for social enterprises are multiply as some social enterprises mainly live on the resources such as the private donation and the funds, but a social enterprise is eventually an enterprise and the continuous economic activities is the core criterion of a enterprise. Therefore, the criterion should be one aspect of economic dimension.

b) Some degree of autonomy. The autonomy of social enterprise is important for the members to keep the social goal. Because that the situations in China are diverse: the quasi social enterprises are in the forms of cooperative, company and institution, and the degrees of autonomy of different legal forms are different. Therefore, for the transformations of the current quasi social enterprises, the span of the degree of the social enterprise should be bigger.

c) A significant level of economic risk. Although most social enterprises in different countries and regions endow some preferential policy, the social enterprises perform the activities in the open markets. This criterion is the significant feature of social enterprises and relates to the nature of an enterprise.

There is another criterion in the economic dimension of EMES: a minimum amount of paid work. The purpose of this criterion is to distinguish the social enterprise from a volunteer organization. But in China, the volunteer organizations are not so ripe that they merely do some social public welfare activities. Therefore, there is no need to limit the paid work in the social enterprises in China.

On the social dimension, it includes five criteria:

a) An explicit social goal. For the diverse quasi social enterprises in China, most of them have the goal to benefit the society, not just the community. Therefore, the social enterprise in China must have an explicit social goal to perform all kinds of activities, which is a little bit different from the social dimension of the EMES's.

b) A decision-making power not based on capital ownership. This criterion ensures the social enterprises, especially the cooperatives, operate for the benefit of the members, not just for the investors, which is also correct in the conditions of China. But for some exceptions, there are also decision-making not obeying the principle of "one member one vote", which is depend on the forms of social enterprise. The exceptions are needed to deal with the relations among the stakeholders and to get more resources for the social enterprise.

c) A limited profit distribution. This criterion works as a financial limitation to prevent social enterprises from becoming to a for-profit corporation and keeps the nature of social enterprises.

d) A participatory nature, which involves various parties affected by the activity. The participatory nature related to the nature of the social enterprise, with which the social enterprise can balance the interest of different members and affect decision of the social enterprise.

There still one criterion included in the social dimension of the EMES's: An initiative launched by a group of citizens. Because the social enterprises in China are

diverse and some of them are established with the help of the local authorities, the requirements are too strict for sponsors.

The definition of social enterprise in China has integrated the reasonable elements of the definition defined by EMES and the realities in China. But it's just a research frame that lacks of maneuverability. Therefore, it should make further research to solidify the principle dimensions and provide the specific rules in the laws of social enterprise to measure the organizations in the realities.

2.2 The features of social enterprise

For the complexity and diversity of context which social enterprises develop in, the concepts, the legal forms and the titles of social enterprises are different. What can be used to judge whether an organization is a social enterprise or not is the nature of it, which reveals by their features. By the features of social enterprises, we not only tell the differences between social enterprise and profit enterprises, public agencies and other NGOs, but also can do lots of comparative research among different regions and countries.

In 2001, Social Enterprise London (SEL) identifies three common features of social enterprises: 1. enterprise orientation. They produce goods and supply services for the society in a continuous and stable way; 2. social aims. They have explicit social aims such as job creation, training or the provision of local services, which they pursue through their trading activities; 3. social ownership. They are autonomous organizations with governance and ownership structure based on participation by stakeholder groups or by trustees. (Social Enterprise London, 2003) Giulia Galera considered that, the salient features of social enterprises should be attributed to three points: 1. the social goal pursued; 2. the non-distribution constraint; 3. the assignment of ownership and control rights to stakeholders other than investors, coupled with an open and participatory governance model. (Giulia Galera, 2008) There some difference between the opinions, which maybe mainly derives from the following reason: the former one is based on the legal form of social enterprise in the U.K, and the main part of social enterprises choose the form of limited company; the latter one based on the legal form of social cooperatives in Italy, and the features of social

cooperative are different from the social enterprise in the U.K.

In China, some academician also gave their opinion about the features of social enterprise, although they're not so mature. Ma Zhongliang considered that there are five features of social enterprise: 1.the social goal; 2.operating by business model; 3.the non-distribution constraint; 4.leaded by social entrepreneur; supported by the government. (Ma Zhongliang, 2006) These features are common and do not contain the features of the realities in China, for example, the diverse forms of quasi social enterprises.

The common features of social enterprise commonly extracted to three aspects: the economic factor, the social factor and the governance of social enterprise. During these features, it can be seen that the core feature is connected with the social goal which reflects the nature of social enterprise; and the features concern economy and the governance of social enterprise are served the core feature.

2.3 The characters of social enterprise

The formations of the characters of social enterprise are difficult. According to social enterprise, different countries and regions have different exact forms even in European countries. What' more, on one hand, the degree of development in economy, society and culture, the practice and research of social enterprise in each county has its respective way; on the other hand, as the time goes by, social enterprise in Europe countries has influenced each other and reflected a region character, because of the impulse of European and the development of Europe integration.

And for the diversity and complexity of social enterprise, the characters of social enterprise in various region and counties are different. What's more, the different social enterprises establish for addressing one kind of social issue is different from for addressing other social issues. Therefore, the character of social enterprise should contain two sides: regional characters and industrial characters.

2.3.1 The characters of social enterprise from different countries and regions

Discussing social enterprise from global scope, for the different socioeconomic backgrounds in the different countries and regions, the characters of social enterprise are different.

According to Janelle A. Kerlin, the current differences in social enterprise found in various regions of the world are, to some degree, reflections of the regional socioeconomic contexts where the term was fixed.³² To analyze the different characters of social enterprise in various regions, Janelle A. Kerlin created several models and set some variables which can reflect the differences: outcome emphasis, program area focus, common organizational type, legal framework, societal sector, and strategic development base. Meanwhile, the criterion concerned social enterprises were also set: market, international aid, state, and civil, society. She compared seven countries or regions: the U.S.A, Western Europe, Japan, East-Central Europe, Argentina, Zimbabwe&Zambia, Southeast Asia, and got a result as follow:

Firstly, the outcomes' emphasis of social enterprise in different countries and regions are different from each other, which reflect the special characters of their own. On one hand, the immediate outcome of social enterprises in Zimbabwe&Zambia, Southeast Asia and the United States focus on the self-sustainability, but the reasons why they set the focuses are various: for example, in Zimbabwe&Zambia, it seems that the cause is their lack of other forms of funding and the emphasis on economic development; but in the United States, the season of setting this focus is the government shrink the funding which the non-profit relayed on before and they had to find new resource to support their service and further development.³³ On the other side, the immediate outcome of Western Europe focuses on the immediate outcome of Western Europe focuses on social benefit, especially dealing with the problems of unemployment and social exclusion which usually supported by the state; and the East-Central Europe is the same.³⁴ The reasons lead to the two regions to focus on the unemployment problem and the social exclusion problem.

Secondly, social enterprises in different countries and regions have their respective focuse of the programs. In United States, social enterprise basically deals

³²See Janelle A. Kerlin. "A Comparative Analysis of the Global Emergence of Social Enterprise." *Voluntas* (2010) 21:164.

³³See Janelle A. Kerlin. "A Comparative Analysis of the Global Emergence of Social Enterprise." *Voluntas* (2010) 21:168.

³⁴See Janelle A. Kerlin. "A Comparative Analysis of the Global Emergence of Social Enterprise." *Voluntas* (2010) 21:168.

with all kinds of social issues on some degree; but in Southeast Asia and in other countries, most social enterprises deal with the issues of employment or human service.³⁵

Thirdly, in different countries and regions, the social enterprises conduct their own legal form, reflecting surface characters of social enterprise of theirs. In Japan, the United States, the social enterprise usually uses the legal form of nonprofit and company. But in Western Europe and East-Central Europe, the social enterprises take the legal forms of association and cooperative; in Japan, social enterprises conduct the legal forms of nonprofit and company; in Argentina, the social enterprises conduct the legal forms of cooperative and mutual benefit; in Zimbabwe&Zambia, the social enterprises conduct the legal forms of micro finance institution and small enterprise; in Southeast Asia, social enterprises conduct the legal forms of small enterprise and association.³⁶

The different characters of social enterprise from various regions and countries contain several implications: firstly, the characters of social enterprise reflect the socioeconomic context of the whole country and also are also dictated by it. What's more, by drawing on the dominant factors, social enterprises can gain a greater progress. Secondly, the social enterprise system is directed against the issues that the region or the country wants to address. Therefore, the characters of social enterprise not only contain the symbols of the social enterprise, but also the input and outcome of social enterprise. Thirdly, there are some obvious differences between the characters of social enterprise in developed countries and those in developing countries. For example, the degree of depending on the market of social enterprise is higher in developed countries than that in developing countries. In sum, the outcome emphasis of social enterprise concentrates on the overall immediate goal in implementing a social enterprise activity which is relative to other regions' emphases.

2.3.2 The characters of social enterprise from different industries

³⁵See Janelle A. Kerlin. "A Comparative Analysis of the Global Emergence of Social Enterprise." *Voluntas* (2010) 21:169.

³⁶See Janelle A. Kerlin. "A Comparative Analysis of the Global Emergence of Social Enterprise." *Voluntas* (2010) 21:169.

Since social enterprise involves so many fields and addresses so many social issues, for example structural unemployment of groups excluded from the open labor market, some social service like health, education, urban regeneration, and the provision of other public goods or services, the social enterprises in each field have their own specific characters. According to the fields of social enterprises involved, as the legislations in some countries, the social enterprises can be divided into two categories: one handles the social problems of shortage of social services and social goods. The other one performs the activities for integrating the disadvantaged unemployed people. Specifically, the social enterprise in the field of helping disadvantaged unemployed people is emblematic of the dynamics of social enterprises and constitutes a major sphere of their activity in Europe, (Marthe Nyssens, 2006) namely “work integration social enterprise”. Like in Italy, the legislation divides the social enterprise into two types: cooperative A, which deals with the issues of the supply of social goods and social services; and cooperative B, which deals with the issues of social integration by the way of result the problem of unemployment of vulnerable group in the labor market.

2.3.2.1 The characters of social enterprise for the supply of social goods and social services

The shortage of social goods and services in many scopes is the main reason for the origin of social enterprises in plenty of countries and regions, due to ineffective of the market, the institution and the traditional third sector in supplying of social goods and services. The social enterprise has the advantages of supplying social goods and service effectively comparing to other suppliers, which reveal the characters of social enterprises. In contrast of market, the social enterprise for supplying social goods and services has the ability to avoid “market fail”, for its nature of pursuing social interests and being evitable to run the business only on the behalf of the stakeholders. In contrast to the institution, this kind of social enterprise is more effective because they can avoid “governmental failure” for their way of realizing social purpose in the open market and the governance in the social enterprise. In contrast to the traditional third sector, social enterprise for supplying of social goods and services has two

obvious characters: on one side, it has the multiple resources, especially the benefit from running business, so that it can survive and develop independently; on the other side, it has the democratic principles in the governance, which performs the rule of “one member one vote”. In addition, the activities of social enterprise for supplying social goods and services are limited in the fields which are provided by the law, such as development cooperation, education, advocacy, environmental protection and so on, so that its characters in the process of realizing its economic and social purposes will completely come out.

2.3.2.2 The characters of social enterprise for social integration.

Since the unemployment rate of disadvantaged workers is high especially during the economic crisis, and exclusion from the labor market can be considered as one of the most important causes of social exclusion, the integration of disadvantaged workers is the most widespread among the host of activities by social enterprises.³⁷ In the activities preformed by integration social enterprise, the characters of it come out through the comparing with other organizations.

According to the opinion of Giulia Galera, in contrast to the sheltered employment workshops, the integration social enterprises can offer a more quasi market salary, more stable and safe work to disadvantaged workers; and the integration social enterprise are more effective in helping disadvantaged workers to gain control over their own lives.³⁸ Therefore, the integration social enterprises are more successful than sheltered employment workshops in integration of disadvantaged workers. In contrast to other policy measures, work integration social enterprises are a new initiatives way for training and employing disadvantaged workers, which have an entrepreneurial character that enable the disadvantaged workers to work and raise their productivity.³⁹ In contrast to the for-profit firms, work integration social enterprises have the ability of reconciling both the sells (sales of

³⁷See Li, Rita Yi Man. “The economics of social responsibility: the world of social enterprises.” *Review of Social Economy* 70.4 (2012): 524-527.

³⁸See Li, Rita Yi Man. “The economics of social responsibility: the world of social enterprises.” *Review of Social Economy* 70.4 (2012): 524-527.

³⁹See Li, Rita Yi Man. “The economics of social responsibility: the world of social enterprises.” *Review of Social Economy* 70.4 (2012): 524-527.

goods and services in a market and contractual logic way, and the function of stimulating the development of skills and competences which can raise the ability of surviving in the open labor market.⁴⁰ The characters show the advantage of integration social enterprise by the effectiveness, the innovation and the compatibility in the process of addressing the unemployment and social exclusion.

The characters of social enterprises from different industries mainly focus on the advantages over other organizations in addressing the social problems. The social enterprises work as an effective mechanism of supplying social goods and social services, and integrating disadvantaged people, conquer the “market failure” by the market and the “government failure” by the government, with the supporting policies, specific legal entities, effective governance and innovations of operating business on the open market.

2.4 The differentiations of social enterprise, social entrepreneur and social entrepreneurship

In the U.S.A, because of the urgency of the third sector organizations calling for innovative alternatives and the emphasis put on the individual dimension of the social entrepreneur, the defined concepts of social entrepreneurship, social entrepreneur and social enterprise started to be employed, often interchangeably, when nonprofits experienced cutbacks in government funding.⁴¹ And some scholars held that, when the term “social entrepreneur” associated with the term “social enterprise”, the latter term will has an alternate meaning; the foundation community held that, “social entrepreneur” is an individual who takes an exceptional, innovative approach to deal with social problems on a large scale, including the approach involves the generation of earned income; (Bornstein,2004;Martin&osberg,2007;Janellea A. Kerlin & Kirsten Gagnaire,2009) the term “social entrepreneurship” describes the socially innovative action undertaken by the “social entrepreneur”, while “social enterprise” becomes by extension the vehicle by which he or she can perform the action. (Janellea A. Kerlin &

⁴⁰See Li, Rita Yi Man. “The economics of social responsibility: the world of social enterprises.” Review of Social Economy 70.4 (2012): 524-527.

⁴¹See Li, Rita Yi Man. “The Economics of Social Responsibility: The World of Social Enterprises.” Review of Social Economy 70.4 (2012): 524-527.

Kirsten Gagnaire, 2009) What's more, some other scholars argued that, the term "social entrepreneurship" and the term "social enterprise" should be identified as: social entrepreneurship seeks tipping points for innovation and change, social enterprise seeks profits for reinvestment and growth. (Light, 2008) It seems that, the scholars distinguish the three terms from the perspectives of their functions.

In Europe, for the different contexts and the specific legal forms of social enterprise, the opinions hold by some academicians are not the same as the Americans'. Carlo Borzaga considered that the terms "social enterprise", "social entrepreneurship" and "social entrepreneur" all refer to initiatives the same goal that aim to generate social value through the private use and management of human and financial resources; but he suggested that there are also some differences between the terms obviously seen by contrasting social enterprise and social entrepreneurship: firstly, social enterprise refers to a production unit which produces general-interest services in continuous and stable way, and social entrepreneurship encompasses a broad range of activities and initiatives that fall along a continuum with a social goal; secondly, social enterprise is often places on the collective dimension and social entrepreneurship places on the individual dimension. (Carlo Borzaga, 2013) Some academicians considered that objects which of social enterprise, social entrepreneurs and entrepreneurship refer to are different. Bartlett considered that social entrepreneur refers to a person but social enterprise refers to a project in or through which the social entrepreneur works, and social entrepreneurship refers to the state of being or practicing in or through the social enterprise. (Bartlett, 2004) Some scholars considered that social enterprise is generally conceptualized as an organization that trades for social purposes. (Haugh&Kitson, 2007; Nicholls&Cho, 2008; Ridley-Duff, 2008; Townsend&Hart, 2008; Neck et al, 2009; Jane Farmer, Carol Hill and Sarah-Anne Munoz, 2012) Bornstein considered that social entrepreneurs are viewed as crucial actors in the entrepreneurship process and are people with new ideas to address major issues, who are relentless in the pursuit of their visions. Harding considered that entrepreneurship is any attempt at new business or new venture creation, such as self employment a new business

organization, or the expansion of an existing business by an individual, team of individuals or established business. (Harding, 2007; Jane Farmer, Carol Hill and Sarah-Anne Munoz, 2012)

Since the definition of social enterprise are different in the U.S.A and Europe: the former is generally broader, which includes both nonprofit and business, the differentiations approach of the three terms in former and latter are also different: the former focus on the function that the social entrepreneurship seeks tipping points for innovation and change, social enterprise seeks profits for reinvestment and growth, but the latter focus on the objects that the three terms refer to.

The differentiations among social enterprise, social entrepreneur and social entrepreneurship, are mainly in the following aspects: firstly, the objects that the three terms refer to; secondly, the functions that they performed in the process of pursuing social goals; third, the goals that they focus on.

2.5 The functions of social enterprises

The interest in social enterprises stems from the importance of these organizations as institutional arrangements that are able to tackle economic and social concerns and challenges that neither public agencies nor for-profit enterprises can address effectively, (Giulia Galera, Rocio Nogales, Geoffrey D. Prewitt, 2008) and during this processes, social enterprises perform the many functions for the society, such as social functions and economy functions. Also, as the literatures show, in past less than 25 years, the social enterprises have made a great success throughout the world, especially in Europe and the U.S.A and the reason is that social enterprise has kinds of functions for dealing with the issues occurred in those countries and regions. Yet the functions performed by social enterprise in accordance with the issues emerged in their societies, the issues are not all the same, therefore, the functions of social enterprise in the different countries and regions are different. Among most countries and regions, some common functions are almost the same, as well as the social enterprises.

2.5.1 The social functions

Usually, social enterprises perform two types of social functions: firstly, they

offer public goods and social services. Since the public institutions and traditional enterprises fail to deliver contributions to a more balanced use and efficient allocation of resources to the advantages of the community generate new jobs, the social enterprises perform their advantages to complement public goods and social services on the behalf of social benefit. Secondly, they offer jobs for the disabled. The other kind of social enterprises focus on the integration of the disabled and help foster social cohesion and enhance social capital on the behalf of the social benefit, by the way that “they supply goods/services that are characterized by a high social potential and adopt inclusive and participatory institutional structures support the institutionalization of informal activities belonging to the underground economy.” (Carlo Borzaga, 2010)

2.5.1.1 Create jobs opportunities for vulnerable groups

As we all know, in the open labor-market, the quasi-groups like the disabled, people over 50 years of age, young people with low qualifications, young mothers with children, rural workers, the mentally ill, homeless people, immigrants, working poor, and national and ethnic minorities, and other marginalized groups like drug addicts, alcoholics and former prisoners, these people have few opportunities to get a job and are regard as the vulnerable groups in the labor-market.⁴² And for the importance of the job for an advantaged people and their families, the unemployment of the vulnerable groups has become an urgent problem in most countries and regions. Therefore, to deal with this problem, integration social enterprises perform the functions of employing the vulnerable groups through the following aspects:

First of all, social enterprises innovate new economic activities and contribute to creating new work opportunities for the whole society, especially for the vulnerable groups. The vulnerable group has equal opportunity to get a job in the open labor-market. What’s more, the serious competence in the open labor-market gives pressure to stimulate the vulnerable groups to raise their capacities for getting a job.

⁴²See Carlo Borzaga, Giulia Galera, Rocío Nogales. “Social enterprise: a new model for poverty reduction and employment generation An Examination of the Concept and Practice in Europe and the Commonwealth of Independent States.” UNDP Regional Bureau (2008):4.

In 2005, the social cooperatives in Italy employ 244,000 people.⁴³ Not only in Italy, in 2012, in the U.K, the Small and Medium-sized Enterprises social enterprises (good fit definition) employed 1,532,700 workers.⁴⁴

Secondly, integrated social enterprises offer the vulnerable group work experience and on-the-job training. The target of this strategy is to build the connection between training and employment which so many programs fail to deal with (Giulia Galera, 2010; Spear and Bidet 2005). With the help of the integration social enterprises, the vulnerable group may raise the abilities and confidence of getting a new job, increasing the rate of employment of them.

Thirdly, integration social enterprises can offer the vulnerable group transitional jobs the permanent self-financed jobs which are alternative choice for the vulnerable groups.⁴⁵ In some countries and regions, the governments have carried out some financial policies to facilitate the integration social enterprises to survive and develop, such as European Union has implemented recommendations and structural funds to address problems of social exclusion and unemployment.⁴⁶ After a temporary subsidy, the integration social enterprises tend to develop the ability survive independently with local policies, the innovation of running a business and the corporation between them and the local authorities. Therefore, integration social enterprises can offer the vulnerable groups the permanent self-financed jobs, and it's also the initial step target of these kinds of social enterprises. In some countries and regions, the law of integration social enterprise set the minimum proportion of vulnerable workers out of the total workers as the criteria of it, such as Italian. These measures are the common strategies of social enterprise to integrate vulnerable groups; in specific country and region, there are some niche aiming at measures to their social problems.

2.5.1.2Poverty-relief

⁴³See Esposito, Robert T. "The social enterprise revolution in corporate law: a primer on emerging corporate entities in Europe and the United States and the case for the benefit corporation." William & Mary Business Law Review 4.2 (2013).

⁴⁴See The Cabinet office of the UK. "Social enterprise: market trends."

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205291/Social_Enterprises_Market_Trends_-_report_v1.pdf, 2014-02-23 log in.

⁴⁵See Leonardo Becchetti & Carlo Borzaga. "The economics of social responsibility-----The world of social enterprise." Routledge, Taylor & Francis Group, (2010):112.

⁴⁶See Janelle A. Kerlin. "enterprise global comparison." Tufts University Press, (2009): 50.

In most developing countries and regions, poverty is still a serious problem. Since the social enterprise works as an innovation for dealing this problem, and so many countries and regions have made a big progress in poverty-relief, such as Grameen Bank in Bangladesh, created by Muhammad Yunus, has made a great success in poverty-relief in Bangladesh. During the course of social enterprise performing the function of poverty-relief, some measures usually are carried out to realize their targets: firstly, providing the finance for assisting the poor people to develop through performing some economic activities. This kind of social enterprise usually infer to financial social enterprises whose target is to poverty-relief by supplying the financial assist. Secondly, social enterprises innovate adaptive programs for the poor people to lift out of poverty. One of the most important advantages of social enterprise is the entrepreneurial orientation which characters with the innovation to realize the goals of social enterprise. Most social enterprises explore innovations to compete with other organizations in the open market and get the enough space for surviving. The adaptive programs for poverty-relief can complete the poverty policies and convert the social needs to market demands so that they usually make positive effect in poverty-relief. Just like Xingpeng Work Shop in Beijing, China, succeeded in improving the living conditions of disadvantaged groups and the education of students from poor families by promoting fair trade handicrafts.⁴⁷ Thirdly, training the poor to self-development and achieve sustainable development. According to the poor, the most important thing isn't the finance assistant from government or other organizations, but the raise of the capacity for self-development and achieves sustainable development. Therefore, social enterprises also can provide some information, training and service to assist the poor to lift out of poverty. For example, Beijing Cultural Development Center for Rural Women is such a social enterprise to help rural women who have migrant to urban cities to poverty-relief through supplying them the useful information, training and services.⁴⁸

⁴⁷See Culture and Education Section British Embassy, "The general report of social enterprise in China(2008)", http://dsi.britishcouncil.org.cn/images/BC_China_Social_Enterprise_Research_Report.pdf, 2013-04-07 log in.

⁴⁸See The homepage of Beijing Cultural Development Center for Rural Women. "The introduction of the center." <http://njnbst263.xiaomi001.com/2014-2-6> log in.

The social functions of social enterprise have some other aspects of integrating the society, such as supplying local communities with basic services, including social services, education services and health services, through various of accesses; increasing the efficiency of the supply of services to public authorities.

2.5.2 The economic functions

Social enterprises have a direct impact upon the provisions of goods and services of general interest, which covers a wide range of activities that strongly affect the well-being and quality of life enjoyed by communities. (Leonardo Becchetti and Carlo Borzaga, 2013) This social value is the ultimate goal of social enterprises. Therefore, economic functions of social enterprises can't be isolated from the social value. In most conditions, the realization of social value may use the means of performing the economic functions of social enterprises. Even the integration social enterprises have to pursue the economic goals as respect to addressed needs and of financial sustainability rather than on profit maximization and financial return.⁴⁹ Therefore, economic functions are important aspects of social enterprises. In 2012, estimated turnover of the Small and Medium-sized Enterprises social enterprises (good fit definition) added up to £121,500 million.⁵⁰ In the U.S.A, social enterprise and some related entities even composite a so-called "fourth sector" of the economy, and get a great success in economy.⁵¹

2.5.2.1 Create wealth for the society or the communities

Social enterprises are economic organizations, which belong to the economic system of the country. So any product of social enterprises, in terms of social goods and social services, will make a contribution to the economic growth of the country. What's more, in some countries and regions, social enterprises directly serve the communities and contribute to the communities on the form of economy.

⁴⁹See Nyssens, Marthe, ed. "Social enterprise: At the crossroads of market, public policies and civil society." Routledge, (2007):47.

⁵⁰See The Cabinet office of the UK. "Social enterprise: market trends."

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205291/Social_Enterprises_Market_Trends_-_report_v1.pdf, 2014-02-23 log in.

⁵¹See Esposito, Robert T. "The social enterprise revolution in corporate law: a primer on emerging corporate entities in europe and the united states and the case for the benefit corporation", William & Mary Business Law Review 4.2 (2013).

2.5.2.2 Contribute to concentrate social resources and improve the economic efficiency

To some degree, social enterprises stem from the public funding in the 70s of 20th century in western countries. To maintain, even to develop, some organizations belonged to the third sector perform some activities in the open market. As the dimension becoming larger and the system improving and perfecting, social enterprises work as an important platform for the social resources to concentrate. The social capital can be divided into financial resources and non financial resources. For the former one, social enterprises can absorb the investment from all kinds of inventors, such as private individual, private organizations, public organizations, even the agencies. For the latter, some social enterprises can get some degree of voluntary work from volunteers. By the social enterprises as institutional arrangements that perform economic activities more effectively, the social resources can optimize by the market rule. Just like the opinion of some scholars, social enterprises are important contributions both the economy and to the generation of social capital (Romano Porodi, 2002).

2.5.2.3 contribute to a more balanced use of local resources

Since social enterprises have structures of local stakeholders and wide participation, the activities performed by social enterprises can reflect the wills of local stakeholders. The local stakeholders may contain several members: workers, managers, volunteers, donors, consumers or users, public authorities. These participators compose a multi-stakeholders organization in the decision-making process. If according to criteria put forward by the EMES, social enterprises should comply with the principle of “one member, one vote”. Therefore, the decisions made by the organization should reflect the wills of the social from all walks of life, and the use of local resources will come to a better balance among the local groups.

For purposes of establishment of the legal system in different regions are different and the devices of the legal system serve the performance of functions of social enterprise, the functions of social enterprise in different regions are different. What's more, each social enterprise should have a specific social goal for founding the social

enterprises, even in the same regions, the specific function of social enterprise may be different from others. Therefore, the aforementioned functions of social enterprise refer to all the social enterprises throughout the world. But there are still some regular patterns during them: in the developed countries, the social enterprises usually address up the unemployment of the weak groups and provide social services and social goods. While in the developing countries, the social enterprises usually are established for poverty-relief and provide social services and social goods. That's to say, the functions related to the economic and social conditions of one country, exactly related to the serious problems they countered.

2.6 The summary of the chapter

The basic theory of social enterprise contains five parts: the concept, the feature, the character, the differentiations of several related terms, the functions of social enterprise. It's important to introduce these theories because the relevant research in China is rarely weak and it also can pave the way for establishing the legal system in China.

For the sake of research, I just chose some sample countries to introduce and analyze. In Europe, I focus on the research and practice in the U.K, Italy and some other countries and organizations; in the other regions of the world, I chose the U.S.A for sample. Because the social enterprises in these regions have made a great success and the research and practice in these regions are maturer than in other regions. Therefore, the research of the basic theory in these regions will support the successive research. During the research, I use the approach of comparative analysis, to analyze the same points and different points of the basic theories of social enterprise in the advanced countries and regions, so as to get a set of reasonable theories of social enterprise in China, which will pave the way for the research.

For the theories of judging whether an organization is a social enterprise, including the concept, the feature, the character, the differentiations of several related terms, the main useful experience is:

Firstly, the forms of social enterprise are diverse, and the core is nature of them, that is pursuing the social goal by the means of business or economic activities.

Therefore, to judge the current quasi social enterprises should use criterion of the nature social enterprise as a main criterion.

Secondly, after comparing the concepts of social enterprise between the Europe and the U.S.A, the definition of social enterprise in China is important to judge the quasi social enterprises in the realities of China.

Thirdly, the features and characters of social enterprise are related to the concept of it, but they are decided by the nature of social enterprise and the contexts of their regions. Therefore, the criteria of judge whether an organization is a social enterprise are different according to the different contexts, but the nature of the social enterprises are almost the same.

The experience is important to continue the successive research and form the way of judging a social enterprise with Chinese characteristics. To realize the purpose, the definition of social enterprise in China is defined, which integrates the reasonable elements of the definition defined by EMES and the China realities. Although the definition is of principle and lack of operability, it's useful for the further research and legislating the relative laws of social enterprise. What's more, the definition reflects the characters and features of social enterprise in China, and solidifies them for judging whether an organization is a social enterprise.

The functions of social enterprise are the reasons of each region and country that they adopt the forms of social enterprise to deal with social enterprise. Relating the realities in China, the functions should be performed to address up the social issues. The functions are divided into social aspect and economic aspect, which are the two main values of social enterprise. And the two aspects are related: the social aspect is the goal, usually the economic aspect is the mean to realize it. But it is not absolute, sometimes the economic aspect is also the goal, it depends on the beneficiary is a community or several persons, for example the poverty alleviation.

3.The analysis of the legal systems of social enterprise

3.1 The choice of sample legal system to analyze

Since social enterprise has developed for more than two decades, there are many social enterprise legal systems in the world, and it's impossible to analyze every social enterprise legal system. And for establishing a social enterprise legal system in China, there is no need to analyze every social enterprise legal system, based on the need of the research, I just choose some useful and classical systems.

3.1.1 The factors for choosing sample to analyze

In consideration of aforementioned issues such like the social problems and the dilemmas which quasi legal structures encounter in China, following factors should be considered to choose the samples to analyze.

Firstly, the sample to be analyzed should be catered to the urgent related needs of economy and social scopes, especially for the social problems which most people pay close attention to. In other words, the sample should be analyzed to serve the resolution of these problems. Specifically, the homogeneity of problems, the methods sample countries used, the efficiency and effectiveness of the social legal system, the context of society, economy and culture, etc. in the sample countries and China, should be taken into account for selection, of which the legal systems are the main element in addressing up the social problems, and their experience and lessons will be the important reasons to consider.

Secondly, the samples should be catered to the need of the integration of the quasi legal system in China and establishing a new legal system for social enterprise. As aforementioned, the laws of quasi social enterprises do not play important roles in dealing with the social problems. To perform the functions of social enterprise in China, an entire social enterprise legal system should be established and some related policies also should be carried out, which will be integrated the current legal system. During the process, the adaptive samples which will present the experience and lessons for China will be very important.

Thirdly, the samples should be typical and represent the trend of the development

of social enterprise. The advanced sample can give an entire and effective legal system to China to use for reference, even in the perspective of theory. Also, they represent the trend of the development of social enterprise, which will cater the internationalization and globalization context in China. Through out world, the social enterprise legal systems in Europe and the U.S.A are much more mature and have made a great success in dealing with their social problems, and they take the lead of the world in the practice and the theory. Therefore, their social enterprise legal systems are more reasonable and advanced, and they work as the samples for many countries who want to establish the social enterprise legal system, despite the social problems they countered are not the same.

The three elements are important for choosing the samples to analyze. Besides aforementioned elements, there are still some other elements, such as the history, culture context and the level of development, and so on. These elements are also related to the social enterprise legal system if it is adaptable to the reality of China and takes affect in the future.

3.1.2 The samples chosen to analyze

Usually, the legal systems address the needs of developing social enterprises and also reflect the reality of society, economy and culture. Throughout the world, dealing with the social problems emerging in their own countries, many western countries have adopted special laws to regulate social enterprise. In European countries, such as the U.K, Italy, Greece, Germany, Finland, Lithuania and Poland, have made some legislations to regulate social enterprises, despite of the different forms. Italy, Greece and Poland define Social Firms mainly as social co-operatives; the U.K, Germany, Finland, and Lithuania define Social Firms by their function and do not prescribe a specific legal form of a company.⁵² In the U.S.A, there is also a specific legal system for social enterprises and they can adopt the traditional legal forms like sole proprietorship, corporation, partnerships, limited liability company, and non-profit and for-profit organization; and the new legal forms especially for social enterprises:

⁵²See Gerold Schwarz. "Overview on Social Firms in Europe." <https://webgate.ec.europa.eu/socialinnovationeurope/magazine/methods-and-tools/articles-reports/overview-social-firms-europe>, 2014-06-29 log in.

Low-Profit Limited Liability Companies (L3Cs), Flexible Purpose Corporations (FPCs), Social Purpose Corporations (SPCs), and Benefit Corporations.

Aforementioned legal systems, by the criterion of the characters, can be divided into the following models: the cooperative model, in which social enterprises are regulated by a specific law as a form of particular cooperative company which characterized by social goals; the “company model”, which stems from the traditional for-profit corporation but characterized by social purposes and limited distribution constraints; the “open form model”, which provides the social outcomes by law but have no specific legal form to select.⁵³ The models scatter over the world. From the models, each of them will be taken out of one legal structure to be sample of the research on the base of the elements aforementioned. In Europe, the social cooperative legal structure in Italy will be taken out to research the “social cooperative model”, for its great social impact made and the pioneer position in the social cooperative legislation; the CIC legal structure in the U.K and the Low-Profit L3Cs in the U.S.A will be taken out to research the “company model” for their great success in addressing the social issues, and the advanced practice experience and the research theory. The “open form model” will be involved in the next chapter and its typical example is Italy.

3.2 The legal system of social enterprises in the U.K—taking CIC for example

In the U.K, there are several legal forms available for social enterprises: the forms of CIC, Industrial and Provident Society, Charitable Trust and Charitable Incorporated Organization (CIO). But it’s difficult to analyze every kind of legal forms, because that: on one hand, in the UK, there is no a consent definition of social enterprise,⁵⁴ and it’s hard to use the definition of social enterprise to ascertain a legal form. On the other hand, during these legal forms, only CIC is an independent legal entity for social enterprises, which has made a great success in the U.K and has been recognized more and more as an effective legal form for social enterprises.⁵⁵ Therefore,

⁵³See Antonella Noya. “The Changing Boundaries of Social Enterprises.” Local Economic and Employment Development (2009):31.

⁵⁴See Marthe Nyssens, Social Enterprise. “ At the crossroads of market, public policies and civil society.”routledge Yalor&Rrancis Group (2008):260.

⁵⁵See Office of the Regulator of Community Interest Companies. “Information and guidance notes.” Chapter 1

taking CIC legal system for example will achieve two desired effects: on one side, since the legal system of social enterprise in the U.K is an organic whole, on some degree, the introduction of the regime of CIC will bring some illustration of the whole legal system of social enterprise; on the other side, it will illustrate the advantage of the legal system of social enterprises in the U.K, and give a helpful example for other countries which want to establish a legal system of their own.

CIC is a new form of social enterprises for the people who want to operate businesses which trade with a social purpose, or to implement other activities for the benefit of the community.⁵⁶ The legal system has a basic structure: LLC. By using the LLC, CIC contain several specific legal forms: Private Company Limited by Shares, Public Company Limited Liability and Company Limited by Guarantee without a share capital.

Compared with other social enterprise legal forms, CIC has some advantages, for instance, CIC is more suitable for the people who want to work within the relative freedom of the familiar limited company framework without either the private profit motive or charity status; the adaptive scope of CIC is very vast: form a small community care project to a large organization providing international fair-trade type distribution systems for the benefit of overseas producers; the CIC way can be used for operating trading activity for a charity.⁵⁷ All these advantages performed by CIC legal system are composed by the main legal sub-system as follows: the admission and exit regime, the financing profit-limited regime, the governance and regulation regime.

3.2.1 The admission and the exit regime

The admission and exit regime can be divided into admission part and the exit part, which covered the Companies Act 2006 and subordinate legislation, the Companies (Audit, Investigations and Community Enterprise) Act 2004 and the Community Interest Company Regulations(CICR) 2005, because that the U.K is a Common Law country.

(2010): 3.

⁵⁶See Office of the Regulator of Community Interest Companies. "Information and guidance notes." Chapter 1, (2010): 9.

⁵⁷See Office of the Regulator of Community Interest Companies. "Information and guidance notes." Chapter 1, (2010): 9.

3.2.1.1 The admission regime

As a limited company, a CIC must comply with the company law as well as the special legal requirements of CIC. So before being a CIC, the former organization may be a new limited company or an exist organization.

On one side, by complying with the registration articles of the Companies Act 2006, if it starts from a newly limited company, it can take one of the three forms: companies limited by guarantee without a share capital, private company limited by shares or public companies limited by shares. Taking the form of companies limited by guarantee without a share capital, the members guarantee to meet the debts of the company up to a specific limit if it fails; its constitution should specify how people can become or cease to be members. Taking the forms of private company limited by shares or public companies limited by shares, which are the most common forms of capital structure for ordinary, the members just have to pay their full nominal value of a share to the company, and have no further liability for the debts of the company in the event of its failure. The main difference between the forms of private company limited by shares and public companies limited by shares is the transferability of shares: the former is prohibited from offering its shares to the public, but members from the latter can buy and sell the shares freely.⁵⁸

After qualifying as a limited company, for registering as a CIC, it has to meet several qualifications: firstly, it has to adopt a suitable constitution that complies with the related articles the Companies (Audit, Investigations and Community Enterprise) Act 2004 and CIC Regulation 2005. Secondly, it has to make a community interest statement on a form CIC36 or CIC37 declaring that it will carry its activities on the behalf of the community and the way to achieve it. The community interest statement is a key document for the Regulator to judge its purpose for its establishment. Thirdly, CIC must pass the “community interest test”. Fourthly, it must make a declaration that it won’t be an excluded company.⁵⁹

⁵⁸See Office of the Regulator of Community Interest Companies. “Information and guidance notes.” Chapter 3, (2010): 1-7.

⁵⁹See Office of the Regulator of Community Interest Companies. “Information and guidance notes.” Chapter 1, (2010): 11.

On the other side, other existing organizations can be converted to a CIC, including a charity and an Industrial & Provident Society (IPS). Firstly, convert a charity to a CIC. Only in England, Wales and Scotland, the charities can be converted to a CIC. What's more, in these regions, only the charities which are the limited companies have the qualifications for converting to a CIC, except the unincorporated charities, because a CIC must be a limited company. When a charity converts to a CIC, it will lose its charity status. In the procedure of converting, the first step is to get the written consent of Charity Commission, and then deliver a series of documents to the Registrar of Companies. On conversion, the existing corporate property of the company, other than its corporate capital, will be impressed with a trust for charitable purposes, and the company will get a charity status as a trustee to handle its corporate property before being a CIC; meanwhile, the business of the company concerned is not allowed to interrupt into the conversion process. Secondly, converting a IPS to a CIC. There is any legislation about an IPS converting to a CIC directly; but according to the section 52 of the Industrial and Provident Societies Act 1965, the IPS can convert to a ordinary company, and based on the section 26(2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004, a ordinary company can be converted to a CIC; therefore an IPS can be converted to a CIC with two part process, during which a community interest test will be taken.⁶⁰

The admission regime composed by series legislations scatters in several codices and belongs to different legal operation department.

3.2.1.2 The exit regime

In the UK, existing CIC may be converted to a charity, a permitted IPS or liquidation and insolvency.

Firstly, convert a CIC into a charity. If a CIC wants to convert to a charity, it is required to deliver a special resolution, which will cease to be a CIC, and deliver some document as to get the states as a charity. After getting the receipt of the special solutions, the Registrar will refer them to the Regulator and if the Regulator will decide that the CIC

⁶⁰See Office of the Regulator of Community Interest Companies. "Information and guidance notes." Chapter 4, (2010): 9-15.

is eligible to convert, it will advise the Registrar to issue a new certificate of charity incorporation, which means that the special resolutions will take affect and the company will be no longer a CIC. If the Regulator considers the CIC is not eligible to convert, the Regulator will attempt to resolve the problems of the company; if it fails, the Regulator will inform the Registrar and the company the reasons.⁶¹

Secondly, convert a CIC to a permitted IPS. “A permitted Industrial and Provident Society is an industrial and provident society which has a restriction on the use of its assets.”⁶² According to the article of the CIC Regulations 2005, a CIC maybe converted to a permitted IPS. To finish the process, the CIC must deliver some documents to the Registrar of Companies, and Regulator will decide whether the company is eligible to cease being a CIC and the Financial conduct Authority(in Northern Ireland the Registrar of Industrial and Provident Societies) will decide whether to register the company as a registered society on the base of some conditions.

Thirdly, liquidation and insolvency. Generally, Liquidation will happen on two conditions: solvent and insolvent. On the former condition, if the members want to wind up the affairs, liquidate the CIC with voluntary, they will take the steps according to the law to put the company into voluntary liquidation. On the latter condition, it means that the CIC is unable (or likely to become unable) to pay their debts and it has to deal with the debts through the following ways: applying to the Court for appointing an administrator to manage the affairs of the company; members voluntary liquidation; creditors voluntary liquidation; compulsory liquidation by the creditors’ application to the Court.⁶³

3.2.2 The financing regime

The financing profit-limited regime is the main feature of the regime, with which the CIC are different from other organizations. There are several ways for CIC to get

⁶¹See Office of the Regulator of Community Interest Companies. “Information and guidance notes.” Chapter 10, (2010): 4-7.

⁶²See Office of the Regulator of Community Interest Companies. “Information and guidance notes.” Chapter 10, (2010): 7.

⁶³See Office of the Regulator of Community Interest Companies. “Information and guidance notes.” Chapter 10, (2010): 9-10.

the financing for surviving and developing. In terms of the kind of the CIC, the ways are different.

3.2.2.1 The financing regime of CIC limited by guarantee with no share capital (CLG).

The CLG has a few financing ways, according to the CIC limited by share. Usually, the ways for CLG to get funds are grants and donations. Firstly, being a CIC doesn't mean it has an automatic right to grants or other special funds even it's a CLG. But if the CLG exactly match the criteria of the fund, it will get the grant. What's more, according to other CIC, CLGs are easier to get the support from the funding bodies. In addition, during the CLGs, the activities and the social impact are the main considerable reasons to get a grant: if its activities underdone are more in the favor of the community and make a good social impact, it will be easier to get a grant, regardless of its capacity to get profits. Secondly, the donations for CLGs require the CLGs to use the donations exactly to fit the purposes intended.⁶⁴

3.2.2.2 The financing regime of CIC limited by shares

As a company limited by share, CIC have the ordinary ways to financing. Firstly, they can issue shares. If the CIC meet the requirements of criteria of the law, it can issue shares, including the ordinary shares and the preference shares. Secondly, CIC limited by shares can lend capital from banks at normal commercial rates of interest. If the CIC passes the assessment of the banks, they can get a loan from the banks, just like other commercial bodies. Thirdly, CIC limited by shares can issue bond. If a CIC limited by shares fits the requirements of related law, it can issue bond to get financing. Fourthly, CIC limited by shares can get capital from some financial institutions in the favor of CIC: Charity Bank; Triodos Bank; Co-operative & Community Finance; The Prince's Trust and the Unity Trust Bank and Community Development Finance Institutions (CDFIs). In addition, the Enterprise Finance Guarantee scheme is a scheme to provide guarantees on loans to small firms with viable business proposals that are unable to obtain conventional finance because of a lack of security, which is in favor of the CIC throughout the UK. By the guarantees 75% of the loads, the

⁶⁴See Office of the Regulator of Community Interest Companies. "Information and guidance notes." Chapter 10, (2010): 3-11.

CIC can get some loads from banks. Fifthly, CIC can get resources through the ways of Debt with Equity Characteristics, charges on assets, asset based lending and employee share ownership schemes. In addition, CIC may obtain some grants if they meet the requirements of the funds.⁶⁵

3.2.2.3 The tax deduction and exemption for CIC

Apart from the financing ways stated above, for CIC, there are still some tax deduction and exemption as following: firstly, VAT(Value Added Tax). There is no general exemption from VAT for CIC in normal business activities, while there are some activities engaged in provision of education, health or welfare with tax exemption. Secondly, discretionary rate relief. Some local authority can offer some Discretionary Rate Relief to CIC in some circumstances.⁶⁶

3.2.2.4 The asset-locked regime

The Asset Lock regime is a set of rules designed to ensure that CIC' assets are used on the behalf of the community and it's the fundamental feature of CIC. The rules consist of several parts:

Firstly, the asset-locked bodies. The asset-locked bodies include CIC, charities, permitted industrial and provident societies, a body established outside Great Britain that is equivalent to any of those persons. The nomination of the asset-locked body is important for CIC because that if a CIC is wound up or dissolved when it is not insolvent, the Regulator will consult the CIC to decide the destination of any remaining assets in case of the absence of a nomination.⁶⁷

Secondly, the specific restrictions against assets. The main restrictions of asset-locked against assets are listed as follows:

A.The transfer of assets must satisfy certain requirements: it must represent full market value so that the CIC can retain the value; it is made to another asset-locked body which is specified in the CIC' Articles of Association; it is made to another

⁶⁵See Office of the Regulator of Community Interest Companies. "Information and guidance notes." Chapter 7, (2010): 3-11.

⁶⁶See Office of the Regulator of Community Interest Companies. "Information and guidance notes." Chapter 7, (2010): 10-11.

⁶⁷See Office of the Regulator of Community Interest Companies. "Information and guidance notes." Chapter 6, (2010): 4.

asset-locked body with the consent of the Regulator; it is made for the benefit of the community. The requirements stated are for the assets transferred out of the CIC, while there are still some requirements for the transfer inside the CIC: the payments to staff and directors must not be disproportionately high in relation to their abilities and the services they perform. In addition, the management or other service charges also must represent value of money.⁶⁸

B. The restrictions on the return assets to members. The CIC's assets cannot be returned to its members unless they are themselves asset-locked bodies, except the payment of dividends and the return of paid up capital on liquidation, and these situations only happen in the CIC with a share capital. The requirements between the circumstances of paying dividends to specified asset-lock bodies and shareholders are different: in the former one, the amount of dividend is not subject to the dividend cap, but is subject to the same constraint that apply to a normal company; in the latter one, the payment of a dividend to a private investor is subject to a dividend cap. What's more, in the former one, the received asset-locked body should meet one of the requirements: the Regulator has consented to the payment; the asset-locked body concerned is named as a possible recipient of the company's assets in its Articles. In the latter one, the dividend cap constrained by some conditions:⁶⁹

“The maximum dividend per share limits the amount of dividend that can be paid on any given share. The limit for shares in issue between 1 July 2005 and 5 April 2010 is 5% above the Bank of England base lending rate of the paid-up value of a share. The limit for shares issued on or after 6 April 2010 is 20% of the paid-up value of a share.

The maximum aggregate dividend limits the total dividend declared in terms of the profits available for distribution. Currently, the limit is 35% of the distributable profits.

The ability to carry forward unused dividend capacity from year to year,

⁶⁸See Office of the Regulator of Community Interest Companies(2010): “Information and guidance notes.”Chapter 6,pp.4-5.

⁶⁹See Office of the Regulator of Community Interest Companies(2010): “Information and guidance notes.” Chapter 6,pp.4-7.

currently limited to 5 years.”

Meanwhile, there are still some constraints on the dividends cap: the performance related interest also subjects to the assent-locked, for example, the interest payable on debts or debentures is linked to the performance of the CIC, and the premium over the paid up value of the share received by the members when the redemption and repurchase of shares, or reduction of share capital happen.

These rules stated are the main part of the assent-locked regime of CIC legal system. Because of the function of this regime, on one hand, CIC can perform the activities on the behalf of the community; on the other hand, CIC remain the legal state which is different from for-profit corporations and charities, so that they could be eligible for some financing and tax-preferences policies, with which CIC can get their main opportunities in the competence of open market.

3.2.3 The governance and the regulation regime

To ensure the activities applied by CIC coincide with their principle, the governance and the regulation should be taken to CIC, which are very important for CIC to maintain their nature on the behalf of the communities. In the aspect of legislation, the regime of the community interest test and the regulations of Registrar and CIC Regulator are essential.

3.2.3.1 The governance regime

In the U.K, there is no special governance structure designed for CIC. The mode utilized to regulate CIC is the provisions in Company Act and some rules that emphasize the activities performed by the director and the members should comply with the community interest; the members monitor the director and the Regulator has a responsibility for facilitating the supervision the activities performed by the director and the members.⁷⁰

The rules from Company Act about the governance of CIC, mainly regulate the relations among stakeholders, members and the director. But in the decision structure, there are some differences between the CIC limited by share and the CIC limited by

⁷⁰See Antonella Noya. “The Chang Boundaries of Social Enterprises. Local Economic and Employment Development.” (2009): 47.

guarantees: in the former one, the decision power has a correlation with the capital, as in the ordinary companies; in the latter one, the “one member one vote” rule is applied. For the rights of shareholders in CIC, mainly provided in the Guidance, which illustrates the modes of shareholders’ consultation and participation, including the circulation of newsletters, open forums, information and consultation facilities, the constitution of stakeholder advisory groups or some forms of mandatory consultation in case of relevant decisions.⁷¹ According to the definition of EMES, the former one doesn’t meet the requirements of social enterprise because of the decision power structure. But by the monitoring function of the Regulator, the CIC limited by share will comply with its purpose of benefitting the community.

3.2.3.2 The regulation regime

To some degree, the function of the regulation regime is based on the governance regime, because that the relations among the directors, the major stakeholders and employees in the CIC are main objects of the governance, and keeping the healthy development of the governance is one of the important missions of the Regulator. Therefore, the functional coordination of both regimes is important for CIC to realize the benefits of the communities.

3.2.3.2.1 The community interest test

The community interest test is a core principle for realizing community interest test. If a CIC passes the community interest test, it means that this CIC carries its activities for the benefit of the community. Conversely, a reasonable person will consider that it disqualifies the title of a CIC, and the Regulator may take enforcement action against the CIC. Therefore, not only in the process of register, but also in the period the CIC exists, it must pass the community interest test. In the process of registering to be a CIC, any company must provide the Regulator with the materials that will satisfy the test, which are the necessary documents and it must ensure the Regulator of letting it pass the community interest test. Conversely, the register will

⁷¹See Antonella Noya. “The Chang Boundaries of Social Enterprises. Local Economic and Employment Development.” (2009): 48.

fail.⁷²

In the community interest test, the Regulator will consider if the CIC will fit the community interest from the following two aspects of elements: the affirmative aspects: firstly, the motivation which it is founded for; secondly, the scope its activities engaged in; thirdly, the persons who will be benefit from its activities. The negative aspects: firstly, “political campaigning and activities intended to support political campaigning; secondly, activities which a reasonable person might consider to benefit only the members of a particular body or the employees of a particular employer.” Form the two affirmative and negative aspects, the Regulator will judge whether the purpose of the CIC is for the benefits of the community or not, according to the activities, and how it will be carried out.⁷³

As the core regime of the legal system, community interest test plays an important role in the governance of CIC, which constraints the scope, the beneficiaries and the purpose of the activities of the CIC strictly, so that the CIC can perform their functions effectively and promptly.

3.2.3.2.2 The regulations of Registrar and CIC Regulator

In the UK, in the process of the admission of a company, including a CIC, the governance of the Registrar is important. The Registrar of Companies is a statutory office holder responsible for registration of companies and maintaining the public records related to companies, including CIC, which are different among England and Wales, Scotland and Northern Ireland: in England and Wales is the Chief Executive of Companies House Agency; the Registrar for Scotland located in Edinburgh; the Registrar for Northern Ireland is based in Belfast.⁷⁴ Despite the places they located are different, the responsibilities of those Registrars are the same, based on real conditions according to the laws.

While in the process of the admission of a CIC, including incorporation and

⁷²See Office of the Regulator of Community Interest Companies. “Information and guidance notes.” Chapter 4, (2010):17.

⁷³See Office of the Regulator of Community Interest Companies. “Information and guidance notes.” Chapter 4, (2010): 17-18.

⁷⁴ Office of the Regulator of Community Interest Companies. “Information and guidance notes.” Chapter 4, (2010): 19.

conversion, the governance of the Regulator plays a key role. The Regulator is the chief Executive of the Office of the Regulator of Community Interest Companies in Department for Business Innovation & Skills, which decides whether an organization is eligible to become, or continue to be, a CIC, and it is responsible for investigating complaints - taking action if necessary - and it provides guidance and assistance to help people establish CIC.⁷⁵ What's more, once an organization registers into a CIC, it is still under the governance of the Regulator.

Hence one can see that, the governance between Registrar and Regulator are different but linked. On one side, the former is responsible for the register of all companies; the latter only deals with the requirement specific to CIC. On the other side, all the applications for a CIC need the recognitions of being eligible to become a CIC by the Regulator after they send the appropriate documents to the Register. Only if the Regulator and the Registrar satisfy that the organization is eligible, the Registrar will register the documents and issue a certificate of incorporation of the company as a CIC.⁷⁶

3.2.3.2.3 The community interest annual report

The community interest annual report is the mandatory issue of a CIC and it's a very important element for the Regulator to monitor.

Usually, the report must contain several parts: firstly, a fair and accurate description of the manner in which the company's activities have benefited the community during the financial year; secondly, a description of the steps which the company has taken during the financial year to consult persons affected by the company's activity, and the outcome of any such consultation; the information regarding the Chairman's and Directors' emoluments.⁷⁷ The information in the report relates to the main activities performed by the CIC, during which the connection of the activities and the purpose of the CIC can be seen. Based on the information, the

⁷⁵See The home page of the UK Government. "What we do."

<https://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies>. 2014-04-08 log in.

⁷⁶See Office of the Regulator of Community Interest Companies. "information and guidance notes." Chapter 4, (2010): 19.

⁷⁷See Antonella Noya. "The Chang Boundaries of Social Enterprises." Local Economic and Employment Development, (2009):48.

Regulator can work as a supervisor. What's more, some other important governance regimes are based on this regime, such as the admission regime and asset-locked regime of the CIC.

From the angle of legal, take the CIC legal system for example, the legal system of social enterprise in the U.K has some experience that can be learned for other countries or regions. Firstly, even though it is designed in different periods and scattered in several codes, it seems that the common organization laws and the specific CIC laws, the new laws and the old laws, and the codes and the statutes are amalgamated very well. Secondly, the enforcement of the legal system is operated very well, based on the relatively perfect and mature legislation of social enterprise, environment of the sound, comprehensive legal environment. Thirdly, it is compatible with policies of the government well and promoted powerfully by the government.

From the history of social enterprise in the U.K, among the features stated above, the third feature may be the most highly efficient, effective and low cost way to develop social enterprise, which can be referred to other countries and regions in the future.

3.3 The legal system of social enterprises in Italy—taking the legal system of social cooperatives for example

Italy is a civil law country and its legal system is more systematic than that in the U.K in terms of legislation. In Italy, Italian laws about social cooperatives can be divided into general rules and special rules. The general rules mainly contain in articles 2511-2545 in Italian Civil Code, and the rest about some aspects content of social cooperatives can be found in other acts: the Legislative Decree 14 December 1947, n. 1577, mainly about the consortia of cooperatives; Law 31 December 1992, n. 59, mainly about investor members and mutual funds for the promotion of cooperatives; and Legislative Decree 2 August 2002, n. 220, about the control of cooperatives. The special law mainly contains in some acts about special types of social cooperatives, such as the Legislative Decree 1 September 1993, n. 385); the particular type of mutual relation between the cooperative and its members (e.g., worker cooperatives, regulated by Law 3 April 2001, n. 142); or the particular aim

pursued (e.g., social cooperatives, regulated by Law 8 November 1991, n. 381).⁷⁸ According to the article 2520 in Italian Civil Code, the relation between the general laws and the special rules are set like this: the social cooperatives are subjected to the general laws as long as they are compatible with the special rules.

According to the laws aforementioned, the social enterprises, including the existing ones and the newly registering ones, are recognized by the government, they are divided into three categories: firstly, the social cooperatives, including two types: a) the cooperatives that carry out activities in the area of health, social or educational services; b) the cooperatives that act as firms for integrating disadvantaged people in the labor market, which are recognized by the Law 381 of 1991, and they are the main part of social enterprises. Secondly, traditional third sector organizations. In terms of Law 118 of 2005, the social enterprises also contains some other organizations in the third sector, including voluntary organizations defined by Act 266 of 1991, the associations regulated by the Italian Civil Code 1942, foundations, charitable and social care public institutions, the traditional cooperatives defined by the Act 1947. Thirdly, private legal structures, such as companies. The organizations invested by private persons will be recognized as social enterprises as long as they comply with Law 118 of 2005.

Among aforementioned forms of social enterprises, the social cooperative is the most important one, the main reasons listed as follow: firstly, its great positive functions preformed in Italy. In 2008, the overall turnover produced by Italian social cooperatives adds up to 8.97 billion Euros.⁷⁹ In 2011, the total staff in social cooperative are over 350,000 and 30,000 disadvantaged people were employed by “B type” social co-operatives.⁸⁰ Secondly, it has developed rapidly in the past few years. In September 2011, the number of social cooperatives is 11,808, and their

⁷⁸See Dante Cracogna, Antonio Fici, Hagen Henry. “International Handbook of cooperatives law.” Springer&Eurisce, (2013):481.

⁷⁹See Carini C., Costa E., Carpita M., Andreaus M.. “The Italian Social Cooperatives in 2008: A Portrait Using Descriptive and Principal Component.” Analysis Euricse Working Paper, N.035(2012):12.

⁸⁰See Borgo S. Spirito. “Building solidarity and social innovation: the experience of Italian social cooperatives.” <http://www.federsolidarieta.confcooperative.it/C1/Europa/Document%20Library/federsolidariet%C3%A0%20+%20L%20381%20EN.pdf>, 2014-04-29 log in.

consortiums have increased by 57.7% over the past six years.⁸¹ In addition, 32% of Italian social cooperatives are growing, which is much higher than that in non-cooperative firms.⁸² Thirdly, other forms of social enterprise take a little part in the social enterprise system, either from the angle of the function they performed or from the number and trend of development. In 2011, the number of social cooperatives in Italy adds up to 11,808, while the number of other social enterprises is 769, excluding the social enterprise potential (including non-profit organizations that are not social cooperatives and for-profit businesses operating in the sectors of activity specified by Law 118/95).⁸³ Therefore, the form of social cooperative has become the main and important legal entity for addressing up social issues in Italy, and the unique uncontested legal form of social enterprise.

In addition, social cooperatives represent the main type of social enterprise in Italy.⁸⁴ Since the approval of Law 381/1991 by the Italian Parliament, which creating the legal form of “social cooperatives”, it became the first country to legislate a special law for social enterprise in Europe; and with the Law 118/2005 adopted, which incorporates the principle of pluralism of organizational forms and opening towards new sectors of activity besides welfare, and the variety of the types of organizations eligible to become social enterprises,⁸⁵ its legislation about social enterprise is relatively mature. After all, the social cooperative is the typical legal form of social enterprise in Italy. Therefore, the legal form of social cooperative will be discussed mainly in this paper. Meanwhile, other social enterprise legal system will also be involved.

3.3.1 The admission regime of social cooperatives

As aforementioned, different types of social cooperatives have different

⁸¹ See Borgo S. Spirito. “Building solidarity and social innovation: the experience of Italian social cooperatives.” <http://www.federsolidarieta.confcooperative.it/C1/Europa/Document%20Library/federsolidariet%C3%A0%20+%20L%20381%20EN.pdf>, 2014-04-29 log in.

⁸² See Borgo S. Spirito. “Building solidarity and social innovation: the experience of Italian social cooperatives.” <http://www.federsolidarieta.confcooperative.it/C1/Europa/Document%20Library/federsolidariet%C3%A0%20+%20L%20381%20EN.pdf>, 2014-04-29 log in.

⁸³ See Paolo Venturi & Flaviano Zandonai. “Social enterprise in Italy-----Plurality of models and contribution to growth.” Iris Nwtwork Report(2012):3.

⁸⁴ See J Jacques Defourny & Darthe Nyssens(eds). “Social enterprise in Europe: recent trends and developments.” European Ressearch Network, WP no.08/01 (2008):26.

⁸⁵ See Jacques Defourny & Darthe Nyssens(eds). “Social enterprise in Europe: recent trends and developments.” European Ressearch Network, WP no.08/01 (2008):26.

requirements of admission. The social cooperative mainly depends on Italian Civil Code and the Law 381, which mainly provides the substantive and specific requirements of the admission of social cooperative for two kinds of social cooperatives. The procedures about the admission of cooperative are mainly in the Italian Civil Code, from article 2511 to article 2524. According to these laws, the main conditions of admission listed as follow:

Firstly, the social cooperatives should set the general interest as their target. Before 1991, according to the article 2512 of Italian Civil Code, the cooperative is a type of company to satisfy the common interest of its members by making contracts/transactions with them, which can be divided into three types by the divers of contracts/transactions: employment contracts in worker co-operatives, exchange contracts in consumer or producer cooperatives, and so-called companies with variable capital and mutual purpose, performing the activities for the cooperatives who are also the consumers of the goods or services. After 1991, as provided by article 1 of the Law 381/1991 provided, “social cooperatives societies shall pursue the general interests of the communities in human promotion and in the citizens’ social integration……” This purpose makes the cooperative differ from the traditional cooperatives which perform their activities just on the behalf of their members.

Secondly, the members of social cooperatives should consist of various kinds of stakeholders. According to the Law 381/1991 and the Italian Civil Code, the members of social cooperatives can be divided into the following groups: the members who do some paid works in the social cooperatives; the members who benefit directly from the services and goods supplied by the social cooperatives; the members who work in the social cooperatives without payment (the volunteer members), the number of which can’t exceed half of the total members; financing members and public institutions.⁸⁶ Each group of the composition performs different function so that the social cooperatives can work as an organic whole and operate smoothly for pursuing their purposes.

⁸⁶See Borzaga, Carlo, and Alceste Santuari. “Social enterprises in Italy: The experience of social co-operatives.” ISSAN Working Papers(2000):15.

Thirdly, the conditions on financial aspect of the social cooperatives

1) There are some conditions on “mainly mutual” cooperative, which are different from the “other cooperative”. The social cooperatives being automatically eligible should quantify the conditions provided by the articles 2513 of Italian Civil Code, which make a definition of “mainly mutual” cooperatives:

“a) in consumer co-operatives, sale proceeds from members’ consumption must be superior to 50% of total sale proceeds;

b) in worker cooperatives, labour costs for members’ jobs must be superior to 50% of total labour costs;

c) in production co-operatives, manufacturing costs for goods and services provided by members must be superior to 50% of total manufacturing costs.

In agricultural co-operatives, the condition of predominance exists when the quantity or the value of the products conferred by members is superior to 50% of total quantity or value of products.”

2) There are some conditions which should be provided in their statutes. In terms of Law 381, it doesn’t prevent social cooperatives from distributing profits but it does impose some restrictions on this distribution. Specifically, the article 2514 of Italian Civil Code has set three red lines on the distributions: the first is the amount of profits to be divided must not exceed 80% of the total; the second is the rate of profits of each share cannot be higher than 2% of the rate applicable to the bonds issued by the Italian Post Service; the third is no assets benefits can be distributed should the social cooperative be wound up. The constraints of capital remuneration are just for the social cooperatives defined by the law, the “other cooperatives” divided in the reform of social cooperative law in 2003 are not subjected to them.

3.3. 2 The financial regime

In terms of the finance regime of social cooperative, compared with the for-profit company, there are some characters of the finance regime of social cooperative.

1) The capital in social cooperative is variable. According to article 2511 and 2524 of Italian Civil Code, social cooperatives are societies with variable capital, which doesn’t favor the protection of creditors, and they mainly stem from their open models

for members to entrance and exit. On one hand, the variability of the capital, the voting principle of “one member, one vote” and the limited remunerability of the capital, mainly lead to the problem of capital shortage in the majority of social cooperatives. On the other hand, the positive aspect of the regime, for instance, the multiple resources can avoid the competition with the for-profit company.

2) There are some limits for the capital.

Firstly, the limits for the stocks and shares. According to the article 2525, 2530 of Italian Civil Code, the cooperative capital can be divided into stocks and shares, and the nominal value of each stock and shares cannot be lower than €25 and cannot exceed €100; the transaction of stocks and shares needs authorization of the directors; in general, any each member can't hold a capital share more than €100.000, with the exception of legal entities member, investor members and so on; cooperatives must allocate to reserve fund at least 30% of their annual profits, regardless of the amount of the reserve; meanwhile, cooperatives also must allocate 3% of the annual profits to the mutual funds. To some degree, these provisions alleviate the negative effect of the variability of the capital and enhance the protection of creditor.

Secondly, the limits of partial profit non-distribution constraint. According to the article 2514 of Italian Civil Law, the social cooperative must provide the articles about non-distribution constraint in its statutes: “The prohibition to distribute dividends on the paid-up capital higher than the maximum interest of postal bonds increased by 2.5 points; the prohibition to remunerate financial instruments held by user-members more than two points above the maximum interest applicable to dividends; the prohibition to distribute reserves to user-members; the obligation to devolve, in the case of dissolution, all assets, subtracting only the paid-up capital and the dividends due but not yet distributed, to the mutual funds.”

There are two important clarifications about this article: firstly, the provisions just refer to the user-members, rather than the invest-members; secondly, the article exclusively refers to profit distribution and capital remuneration.⁸⁷

⁸⁷See Cracogna, Dante, Antonio Fici, and Hagen Henry. “International handbook of cooperative law.” Springer, Heidelberg (2013):490.

In terms of the difficulties countered by social cooperatives in reality, the law reform of 2003 set a new way for social cooperatives to reinforce the ability of social cooperatives to get resources of development. According to the article 2526 of Italian Civil Code, “the statute may provide for the issue of financial instruments, in accordance with the regulation on limited shareholder companies”. In order to balance the user-members and the invest-members, in social cooperative, on one hand, financial instrument holders can be remunerated without limit; on the other hand, the administrative rights of the financial instrument holders is limited: the category of financial instrument holders cannot have more than 1/3 of the total votes in the member assembly, and the right to elect administrators could also be awarded to financial instrument holders, but with the maximum of 1/3 of total administrators.

This purpose of the provision is to prevent the financial instruments holders from hindering the institutional mutual purpose of social cooperatives.

3.3. 3The tax regime

Since the value of the social cooperatives is recognized by the constitution and the laws, the quantified social cooperatives can charge nil rate or 4% VAT, compared with the 20% standard rate vat to be charged by profit-orientated businesses,⁸⁸ but not all the social cooperatives can be eligible to the tax preferences, even though some legal forms were recognized by the Law 381/1991.

These social cooperatives should be eligible to tax benefits.

What's more, according to the article 7 of the Law 381/1991, the main legal instrument governing VAT is DL633/1972, which has been amended several times. The latest version of DL633/1972 states: “Goods and services are subject to 4% VAT the (where) provision of health, social and educational services, including domiciliary, residential and other type of care (are) provided for the elderly, the disabled, the drug dependent,by co-operatives and their consortia directly or within the framework of specific or general contracts.” According to this regulation, social cooperatives perform activities in fields of health, social and educational services, other types of

⁸⁸See Gosling, Paul. “Social Co-operatives in Italy: Lessons for the UK.” London: Social Enterprise London (2002).

care for the elderly, the disabled and the drug addicted, are subjected to 4% VAT. There is another nil rate for some social cooperatives as the article 10 of DL633/1972 states:

“the provision of educational services for children and young people……by institutes and schools recognized by the public administration and by the ONLUS (not-for-profit organizations with social aims) ……the provision of health and social services, domiciliary, residential and other type of care provided for the elderly, the disabled, the drug dependent,……by public bodies, …… entities with the aim of providing social care and by the ONLUS (are exempted from charging VAT).”⁸⁹ After the law reform of social cooperative law passed in 2003 and came to force in 2004, the legal system of social cooperative has made some changes: the social cooperatives are divided into two kinds: “mutual cooperative” and “non mutual cooperative” or “other cooperative”, which is judged by the articles 2513 of Italian Civil Code. Only if the cooperatives are recognized by the law, they will be eligible to the tax preferences.

3.3. 4The governance regime

The structure of governance in social cooperative is decided by their target and the composition of the members.

The governance structure mainly performs their functions in the process of making decisions in cooperative assembly. Before the social cooperative law reform in 2004, the voting right obeys the principle of “each member has a vote”, regardless of the amount of the subscribed capital, according to the article 2538 of Italian Civil Code, which has followed by other European national law and SCE Regulation.⁹⁰ The principle avoids the emergence of controlling single members, and deviates the purpose of the social cooperatives.

After the law reform in 2004, there is an exception to the principle, that is the legal entities, which can be a cooperative or other legal forms of organization (to keep a balance between the user-members and capital-members, they can be entitled to a maximum of five votes), and financing members. What’s more, there is another

⁸⁹See Gosling, Paul. “Social Co-operatives in Italy: Lessons for the UK.” London: Social Enterprise London(2002):25.

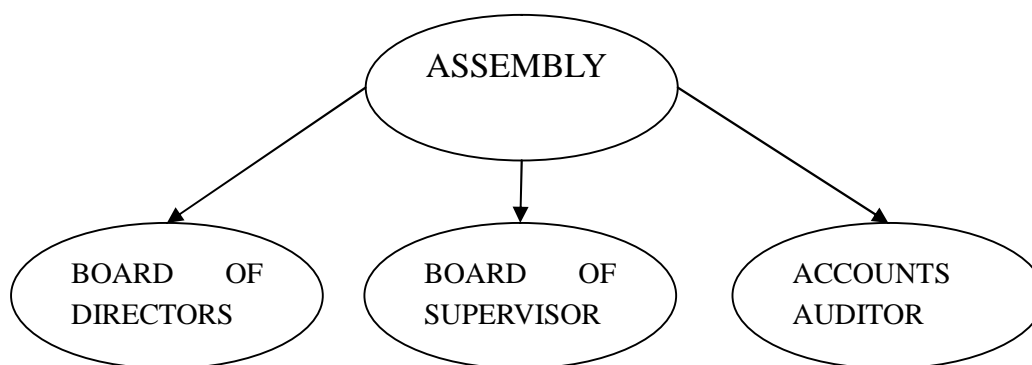
⁹⁰See Fici, Antonio. “Italian co-operative law reform and co-operative principles.” Euricse, Italy (2010):13.

exception to the principle, emerging in the cooperatives where entrepreneurs exist, that is, the statute of cooperatives may allocate and determine votes in the proportion to the mutual exchange, and the transactions between the member and the cooperative. But there are some limitations to this exception: indeed, each member, to whom more votes have been assigned under this rule, cannot have more than 10% of the total votes in each assembly, and all these preferred members together cannot have more than 1/3 of the total votes in each assembly.

The gadget of the exceptions stems from some reasons: firstly, it works as a solution to deal with the problems arising in cooperatives with inhomogeneous membership; secondly, it can reduce the risk of undermining the social function of the cooperative structure; thirdly, the limit exception of voting right may be related to the quality or quantity of the mutual exchange between the member and its cooperative, but not the amount of the subscribed capital.⁹¹ What's more the exceptions of the voting right are also in favor of the compatibility of social cooperative and mobile more social resources to invest the social cooperative.

After the social cooperative law reform in 2004, the governance structure becomes more multiple, which is intended to improve the efficiency of the governances on the whole. By now, the social cooperative governance structure is usually divided into three types, illustrated as follow:⁹²

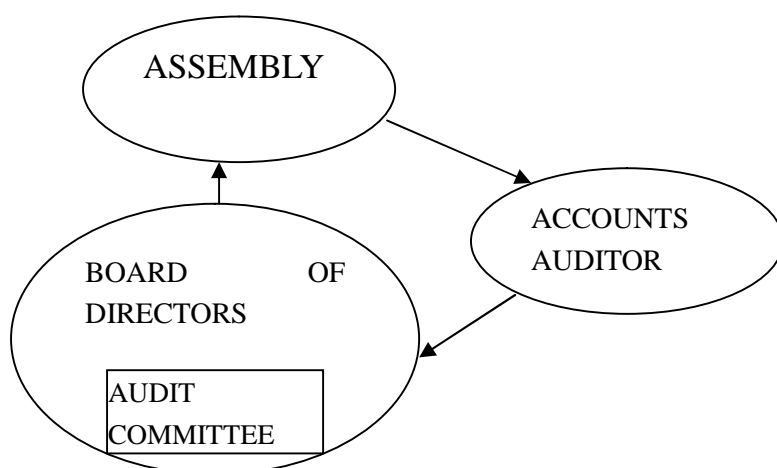
Three-tier/default system



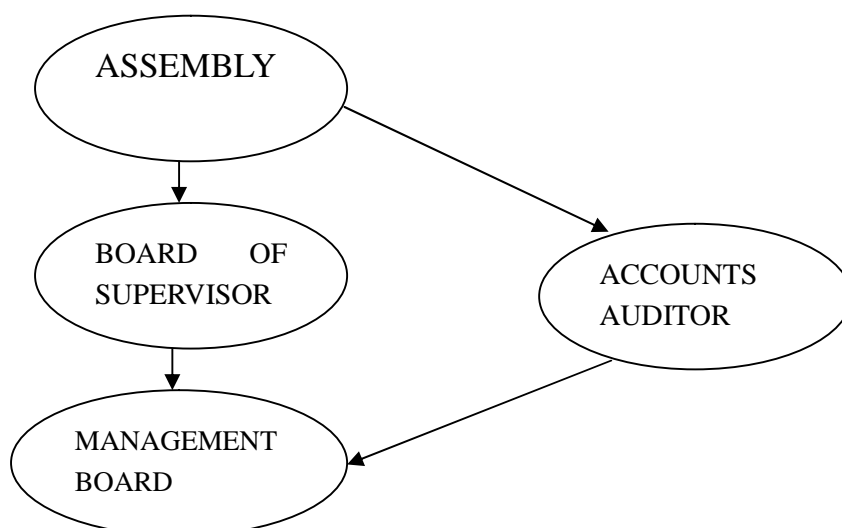
⁹¹See Fici, Antonio. "Italian co-operative law reform and co-operative principles." Euricse, Italy (2010):16.

⁹²See Fici, Antonio. "Italian co-operative law reform and co-operative principles." Euricse, Italy (2010):26.

One-tier system



Two-tier system



As can be seen during the structures above, there are three bodies: the member assembly, the board of directors and the board of supervisors, according to the tripartite model which is the default one and provided by the law. While the dualistic and one tier system are derived from the default model, and are opted by statutes. To understand the three governance structures, it is a good way to analyze the functions of the basic parties of the default one. Firstly, the member assembly is the power body of the social cooperative, and it has the power to appoint and removes the directors and supervisors and approves annual accounts and makes other important decisions of the cooperative. Secondly, the directors are the power executive body of the social

cooperative, managing the ordinary operation of the social cooperative, and performing the decisions of the assembly and other activities on the behalf of the society. Thirdly, the supervisors are the power supervision body of the social cooperative, and verifying the duties and supervising the activities performed by the directors according to the law, the statutory rules and the social object. The three bodies exert their functions and the three parts of the social cooperative are connected, so the social cooperative can operate successfully.

The one-tier system is different from the default one for the following points: firstly, the members composition of supervisors are different: the supervisors are appointed by the directors from its members, rather than directly from the assembly; secondly, at least one supervisor must be a registered auditor; thirdly, the supervisors constituted an internal institution “auditing committee”, which cannot be the members of the director board and don’t attend the management of the operating of the social cooperatives.⁹³

The dualistic system is divided into three parts: the member assembly, the supervisory board and the management board, but is characterized by the important role of the supervisory body. The supervisory board is constituted by the members appointed by the assembly from its members. Its duties are to elect the managers, control their conduct, approve annual accounts, which are in the charge of the assembly in other two types of governance structures. What’s more, it also has the power to determine strategy, industrial and financial plans of the enterprise. While the assembly has fewer power as in other two types of governance structures and it is not in charge of central issues of the social cooperative.⁹⁴

Among the three types of governance structure, in reality, the default one is the mainstream, and just a few social cooperative take the other two governance structures.⁹⁵ As a matter of fact, the differences of the three types of governance structures are mainly focus on the power, which is configured differently in the three

⁹³See Fici, Antonio. “Italian co-operative law reform and co-operative principles.” Euricse, Italy (2010):17.

⁹⁴See Fici, Antonio. “Italian co-operative law reform and co-operative principles.” Euricse, Italy (2010).P.P17-18

⁹⁵See Cracogna, Dante, Antonio Fici, and Hagen Henry. “International handbook of cooperative law.” Springer, Heidelberg (2013):493.

bodies of the structure. For the specific social cooperative, it can choose an adaptive governance structure to balance the interest of members of the cooperative and improve the efficiency according to the dimension, the homogeneity of the members, the other reasons for establishing the social cooperatives.

Compared with the legal system of social enterprise in the U.K, there are several characters in the legal system in Italy: firstly, it pays more attention to the tradition of former specific legal forms, such as the traditional social cooperatives, traditional non-profit organization and investor-owned organizations, which may be included in the scope of social enterprise. Secondly, it emphasizes the mutual purpose of the members of social enterprise, which is one of the main characters of social enterprise in Italy. The differences of relations among the members, investors and other beneficiary and the related regimes stem from the mutual purpose. Thirdly, its development was mainly driven by the urgent needs of realities, while the legal system of social enterprise in the U.K was mainly driven by the government with plenty of supporting measures.

3.4 The summary of the legal systems of social enterprise in Europe

As a whole, in sample European countries, the legal systems and their supporting measures perform the function of conducting the development of social enterprises as welfare factors, given also the more institutionalized nature of the phenomenon dealt with, which reflect the importance of legal system in the development of social enterprise.⁹⁶ Apart from the sample countries, the legal systems in other European countries also work as a main means of dealing with the social and economic issues concerning the social welfare. But because of the specific need of different social realities, the emphasis in these countries are different, for example, in Italy, the social cooperatives focus on the resolutions of unemployment of the disabled and the supplement of social services; while in Poland, the social enterprises focus more on the poverty alleviation and the resolution of unemployment.

Specifically, the legal systems of social enterprise in European countries can be

⁹⁶See Giulia Galera, Carlo Borzaga. "Social enterprise: An international overview of its conceptual evolution and legal implementation." *Social Enterprise Journal* Vol. 5: 3(2009) : 218.

summarized as following:

Firstly, the purposes of forming social enterprises are very important in the legal system of social enterprise. They decide the legal form, the relations between their members, the governance, the supporting measures, and so on. From the point of legal form, as the distinctions we can see between the legal systems in the U.K and Italy, the specific purposes of them are different: the former are mainly the resolutions of unemployment of the disabled and the supplement of social services; and the latter are the benefits of community. The former purposes are more specific and much easier to differentiate so that organizations perform activities in definitive field can be recognized as social enterprise; the latter are broader and it needs a specific regime to stipulate the purposes. On the aspect of content, the purposes decide the regimes of the system and the provisions to realize them.

Secondly, the governance rule coincides with the legal forms of social enterprise. The governance principles play an important role in the governance regime and they coincide with the legal forms of social enterprises. For most social cooperatives, the governance rule is “one member one vote”, with the special governance structure through a requirement to involve divers of stakeholders, which reflects the relation between the capital and the members and the democracy of the governance, despite that there are some exceptions, for example in Italy. While in the company model, such as CIC, the rule “one member one vote” is limited but making decisions by shares, with the character of company governance structure.

Thirdly, new legal forms reflect social enterprise dynamics within the social economy.⁹⁷ For the boom of social problems in Europe, the social economy draws the serious attentions of many European countries, which may balance the development of the economy and society through the entrepreneurial approach. Thereby, some European countries adopted new laws to develop social economy. From the adoption of Italian law in 1991, more than 12 European countries have adopted new law to compel the development of social economy. As a result, with the implementations of

⁹⁷See Jacques Defourny, Marthe Nyssens (eds.) “Social enterprise in Europe: receipt recent trends and developments.” WP 1 (2008).

the new laws about social enterprise, the social economy in Europe flourished, despite that there are still some flaws emerging during the process. And when the definitions of the former laws were perfected, the social economy got another fast development. That the social economy goes up and down was affected by the function of new laws.

3.5 The social enterprise legal system in the U.S.A— taking L3C for example

Before 2008, there is no specific legal structure for social enterprise. The social entrepreneurs want to operate social enterprise to address up social issues through two ways: one way is forming as for-profit entities with some social objectives; the other is forming nonprofit entities with some commercial objectives. But the two traditional forms, for-profit corporation and non-profit corporation, have their own limitations when work as forms of social enterprise.

For non-profit corporation, the limitations are: firstly, it can't receive the full benefits of nonprofit form, including some tax incentive, when it performs business activities; secondly, compared with the for-profit corporation, the form of non-profit corporation tends to react slowly to changes in the demand for the services and goods they offered, which stems from constraints of tax exemption devices and the compensation structure of their employees; thirdly, the allocation of funds has little contribution to the success of the non-profit corporation. For for-profit corporation, its main difficulty is to raise capital, for lower potential to generate economic profits and the obstacles to access equity market.⁹⁸

Responding to the limitations of the two traditional forms and to meet the need of an adaptive legal form for entrepreneurs to form social enterprises, some states legislate a few legal structures for social enterprise, for example, L3C, which was first put into effect by Vermont State in 2008; Benefit Corporation, which is first adopted in Maryland in 2010; FPCs, which is first authorized in California in 2012; SPCs, which is enacted in Washington in 2012. These legal forms are very new but they constitute the legal system of social enterprise in the U.S.A.

The specific purposes of establishing these legal system are different, despite

⁹⁸See Doeringer, Matthew F. "Fostering social enterprise: a historical and international analysis." *Duke J. Comp. & Int'l L.* 20 (2009): 7.

their common goal is to deal with the social issues. L3C is formed a derivation of LLC, and it was proposed to help socially-mission businesses diversify their funding sources by accessing a type of foundation grant called Program-Related Investments (PRIs); Benefit Corporation a variation of the C Corporation and is treated as such for tax purposes and its goal is to achieve a general public benefit; FPC may be formed on the following purposes: firstly, charitable purposes like those nonprofits; secondly, promoting positive activities on its “employees, suppliers, customers, and creditors,” “the community and society,” and “the environment.”; SPCs are formed on the purposes listed as following: “manner intended to promote positive short-term or long-term effects of, or minimize adverse short-term or long-term effects of, the corporation’s activities upon any or all of (1) the corporation’s employees, suppliers, or customers; (2) the local, state, national, or world community; or (3) the environment.”⁹⁹ During these legal forms, L3C is the most adaptable one for China to address up the issue of the governance of foundations, because its methods and goals are directly against the problem emerged in the operation of the foundations in China. Therefore, the L3C form of social enterprise will be chosen to analyze.

3.5.1 The legal system of L3C

There are more than 75,000 grant-making foundations in the U.S.A and both the assets and the amount of distribution of them are very big; but it’s very difficult for them to choose the right companies who will make acceptable PRIs to achieve an exempt purpose and produce profit until the emergent of L3C in 2008.¹⁰⁰ Therefore, it’s urgent to resolve this problem.

Responded to the issue aforementioned, the L3C is first recognized by Vermont State in 2008, and by 2013, there are 6 states and two Native the U.S.A Nations enacting a special law for it, among which are little differences.¹⁰¹ And the primary purpose of the L3C is to make it easier and less costly for foundations to determine

⁹⁹ Raz, Keren G. “Toward an Improved Legal Form for Social Enterprise.” *NYU Rev. L. & Soc. Change* 36 (2012): 12.

¹⁰⁰ See Doeringer, Matthew F. “Fostering social enterprise: a historical and international analysis.” *Duke J. Comp. & Int’l L.* 20 (2009):13.

¹⁰¹ See Whitkin, J. “The L3C: A more creative capitalism.” *Triple Pundit* (2009).
<http://www.triplepundit.com/2009/01/the-l3c-a-more-creative-capitalism/>, 2014-07-02 log in.

where they can safely invest with PRIs, therefore increasing the amount of capital available for social enterprise. Specifically, L3C is designed to attract a wide range of investment sources to improve the viability of social ventures, mainly through the way that it's written to coincide with the federal Internal Revenue Service (IRS) regulations relevant to PRI by foundations and it can provide the flexibility of membership and organization needed to cover a wide variety of social enterprise situations,¹⁰² thereby it is easier to receive PRI from foundations and has a higher ability to adapt to the open market.

3.5.1.1 The admission regime of L3C

L3C is a derivation of LLC and it is a special type of LLC. Usually, the statutes of it as a part are provided in the act about LLC. Like Illinois, in January 2010, a new Section 1-26 about L3C was added to the Limited Liability Company Act. The requirements of forming an L3C in each state also vary slightly. Therefore, the admission regime of L3C in Illinois State can be taken as an example.

In the Limited Liability Company Act of Illinois State, the main requirements of forming a L3C are listed as follow: firstly, "a low-profit limited liability company shall at all times significantly further the accomplishment of one or more charitable or educational purposes." Secondly, a LLC which intends to qualify as a L3C must meet the following criteria in its articles of company: "1) no significant purpose of the company is the production of income or the appreciation of property; however, the fact that a person produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property; 2) no purpose of the company is to accomplish one or more political or legislative purposes." Thirdly, if the company no longer satisfies the requirement of the Act, its articles of company must be amended and no longer to be a L3C. Fourthly, even a limited liability company isn't formed as a L3C, it can also elect a charitable or educational purpose in whole or in

¹⁰²See Rick Zwetsch. "How to :An insider's look ant the L3C and what it could mean for you and your social enterprise." http://www.cobar.org/repository/Inside_Bar/Business/LegislativeL3CArticlebyRickZwetsch.pdf, 2014-05-20 log in.

part for doing business under this Act.¹⁰³ Finally, it should have a name including “L3C”. If a LLC wants to convert to a L3C, it must also qualify the criteria aforementioned. Usually, the restrictions are stipulated in the operating agreement, or in the article of the company if there is no an operating agreement.

As can be seen from the criteria of admission of L3C, the emphasis is paid on the purpose of forming a L3C, with which the L3C differs from the common LLC and other for-profit corporations. Meanwhile the legal form of L3C is the almost the same as LLC. Therefore, the criteria of admission of L3C are consistent with the nature of social enterprise.

3.5.1.2 The tax regime of L3C

The L3C legal form was designed to overcome the tax barriers of private foundation funding mainly by the purposes of forming. Since it’s a derivation of LLC, its mechanisms are almost the same as LLC. For this, there is no special financial regime for L3C, except the tax regime related PRI. Therefore, the following article will mainly analyze the tax regime of it.

L3C doesn’t spontaneously obtain the tax deduction and exemption during its daily activities unless it gets the PRIs which relate to the Internal Revenue Code (“IRC”). Therefore, the shut cut to unpack the theory behind the L3C is to understand the PRI.

The tax regime of L3C doesn’t scatter over the Act of LLC, but in the IRC. According the IRC section 501(c)(3), the legal entities which are eligible to tax-tax-exempt add up to 28 types, but the most common ones can be divided into private foundations and public charities.¹⁰⁴ Between private foundations and public charities, the former is subject to stricter regulations and graduated excise taxes, but they are permitted to take advantage of PRIs.¹⁰⁵ Meanwhile, by law, the IRC requires private

¹⁰³ See Jesse White Illinois Secretary of State. “A guide for organizing domestic limited liability companies.” http://www.cyberdriveillinois.com/publications/pdf_publications/c334.pdf, 2014-02-23 log in.

¹⁰⁴ See Esposito, Robert T. “The social enterprise revolution in corporate law: a primer on emerging corporate entities in Europe and the United States and the case for benefit corporation.” *William & Mary Business Law Review* 4.2 (2013):21.

¹⁰⁵ See Esposito, Robert T. “The social enterprise revolution in corporate law: a primer on emerging corporate entities in Europe and the United States and the case for benefit corporation.” *William & Mary Business Law Review* 4.2 (2013):21.

foundation to distribute at least 5% of its assets annually. And the adaptive ways for distribution should accomplish one of the purposes listed in IRC section 170(c) (2) (B): “religious, charitable, scientific, literary, or educational purposes, or to foster national or individual amateur sports competition . . . or for the prevention of cruelty to children or animals.”¹⁰⁶ Thereby, for the consideration of avoiding penalty taxes¹⁰⁷, any private foundation must not invest any amount in a manner that may jeopardize its exempt purposes, but to accomplish the annual minimum qualified distribution by the means aforementioned. Specifically, if an investment will threaten “the long- and short-term financial needs of the foundation to carry out its exempt purposes.” and is unduly risky,¹⁰⁸ it won’t be carried out by any reasonable foundation manager.

But there is an exception of the “jeopardy investment”: if a L3C has the primary purpose of accomplishing a charitable purpose, even it is financially on risky, it would be consider as a jeopardizing investment, but it will work as a qualified investment of the annual minimum distribution requirement.¹⁰⁹ This device takes the market risk in to account and encourages the foundations to perform their activities for charitable purposes, which consistent with the nature of social enterprise.

Therefore, on one hand, to encourage foundations to increase their PRIs to social enterprises by avoiding penalty taxes; on the other hand, to address up the limitation of traditional legal forms for entrepreneurs to resolve social problems, the designer of L3C builds a bridge between them and statutes transliterated the PRI requirements into the L3C statutes. Under this situation, if a foundation makes a PRI to a L3C and it qualifies the criteria of IRC, the investment will be eligible to tax exempt. Especially, this intensive stimulates the investment of private foundations for the

¹⁰⁶See Maura K. Flaherty. “A new vehicle for mission-driven work: is the low-profit limited liability company right for oregon?” Oregon Law Review (2012):4.

¹⁰⁷According to I.R.C. § 4944 (2009), the penalty tax means that the foundation will be confronted with an initial 10% tax on the value of a jeopardizing investment. And any foundation manager who knowingly makes a jeopardizing investment must also pay a 10% tax on the value of the investment. What’ more, foundations and knowing foundation managers are liable for 25% and 5% excise taxes, respectively, on the value of the jeopardizing investment in each subsequent year in which the investment remains in effect. See Doeringer, Matthew F. “Fostering social enterprise: a historical and international analysis.” Duke J. Comp. & Int’l L. 20 (2009): 29.

¹⁰⁸See Bishop, Carter G. “Low-Profit LLC (L3C): Program Related Investment by Proxy or Perversion?” Ark. L. rev. 63 (2010):5.

¹⁰⁹See Maura K. Flaherty. “A new vehicle for mission-driven work: is the low-profit limited liability company right for oregon?” Oregon Law Review(2012):4.

annual minimum distribution requirement. Besides foundations, the L3C also leverages some for-profit private investors, which is another resource for L3C. As a result, L3C becomes a new legal structure of social enterprise plays an important role in deal with the social problems.

In addition, besides the tax regime, the financial regime is the same as the LLC, including the distribution and the assignment of Membership Interests, which were provided in Article 25 and Article 30 in the Limited Liability Company Act of Illinois State. But there are some differences between them. For example, the L3C may distribute profits if it meets the requirements of distributions provided by the Act, but it must also prioritize a charitable purpose, making it a particularly apt vehicle for an investor concerned with the ultimate impact of her dollar¹¹⁰, which is in accordance with the purposes of L3C.

3.5.1.3 The governance regime of L3C

The governance regime of L3C mainly includes the operating, the distribution, transfer, and so on. As L3C complies the same Act as the LLC, and the characters of the governance regime of it are the functions performed by operating agreement that concerns every aspects of the governance and in which the L3C operating restrictions may be explicitly stated, despite that it isn't required by every state, but it is widely suggested to create one.¹¹¹ Once it is signed by the members, it will act as an official and fundamental contract for any participant, including the members, managers, and the company, and will play an important role in the governance of L3C.

In Illinois State, the operating agreement is required, and the governance regime of L3C is almost the same as the LLC, except that each L3C must create an operating agreement that contractually binds the company to operate mainly for an exempt purpose,¹¹² which has been provided in the article of the company. By the

¹¹⁰See Maura K. Flaherty. "A new vehicle for mission-driven work: is the low-profit limited liability company right for oregon?" Oregon Law Review(2012):3.

¹¹¹See The home page of the U.S Small Business Administration. "Crucial Forms for Your LLC: Articles of Organization and Operating Agreements."
<http://www.sba.gov/community/blogs/community-blogs/business-law-advisor/crucial-forms-your-llc-articles-organization-an,2014-02-15> Ion in.

¹¹²See Doeringer, Matthew F. "Fostering social enterprise: a historical and international analysis." Duke J. Comp.

Limited Liability Company Act, the term “operating agreement” means the agreement under Section 15-5 concerning the relations among the members, managers, and the company. Usually, the operating agreement performs three functions: firstly, it regulates the affairs of the company; secondly, it conducts the business of the company; thirdly, it regulates relations among the members, managers, and the company¹¹³. The governance regime of L3C is mainly carried out by the operating agreement and the article of the company. But compared with the social enterprises in other region, the operating agreement is special and is related to every aspects of the governance of L3C. Thereby, analyzing the operating agreement will be helpful to understand the characters of L3C.

According to the Limited Liability Company Act in Illinois State, the key points about the operating agreement are:

Firstly, it can't unreasonably restrict the basic rights of the members, including the rights to restrict a right to information or an access to records, the right to wind up the LLC's business in a case, the rights to dissociate under certain conditions, and so on; secondly, it can't eliminate or reduce a member's duties or obligations, including the rights of a person, other than a manager, member, and transferee of a member's distributional interest under certain conditions, fiduciary duties, the obligation of good faith and fair dealing; thirdly, the operating agreement of the LLC with only one member, may include the following: “(1) any writing, without regarding to whether the writing otherwise constitutes an agreement, as to the company's affairs signed by the sole member; (2) any written agreement between the member and the company as to the company's affairs; (3) any agreement, which need not be in writing, between the member and the company as to a company's affairs, provided that the company is managed by a manager who is a person other than the member.”¹¹⁴ As we can see that, the operating agreement of common LLC just lists the prohibitions of it and the one-member LLC lists the main scope of it. In other words, they may state other

& Int'l L. 20 (2009): 291.

¹¹³ See The home page of Illinois General Assembly. “Limited Liability Company Act.” <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2290&ChapterID=65>, 2014-02-23 log in.

¹¹⁴ The home page of Illinois General Assembly. “Limited Liability Company Act.” <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2290&ChapterID=65>, 2014-02-23 log in.

aspects about the governance of the company in the operating agreement.

Besides the operating agreement, by the Act, the purpose for which the L3C is organized should be stated in the article of the L3C, which is an important element of the governance regime of L3C, including the transaction of any or all lawful businesses why the L3C may be organized under the Act.

The other part of the governance regime is the same as the LLC, which has little relations with the nature of the L3C.

3.5.2 The summary of the legal system in the U.S.A

In the U.S.A, because of the business activities of the fast development of social enterprise, there is no really new policy created for them.¹¹⁵ Thereby for a long time, the social enterprises embedded in no-profit organizations and for-profit corporations until 2008. By recent years, the innovation of the legal form of social enterprise based on the limitations of the traditional legal forms for social enterprise. The new legal forms enacted in some states, not throughout the whole country, but they spread very fast.

The new legal forms of social enterprise: L3C, Benefit Corporation, FPC and SPCs are all created for the benefit of society, despite that their specific purposes are different and enacted not all in the same states. For the different purposes, the social entrepreneurs may choose the adaptive legal form for realizing their social purposes of addressing specific social issues.

Another character of the development of social enterprise is the legal form of company. This legal form implicates that the scope of the benefiter of the social enterprises will be majority and not limited in the members of the company. That means they benefit the communities or society not by the way of mutual aid but offers social services or social goods to the target groups. These operating models are related to the legal forms of the social enterprise, which base on the limitations of traditional social enterprise legal forms that don't include the form of social cooperative.

For the L3C, it has been enacted for 6 years, but by now there are eight states and two national natives adopting the legal form and several states are considering

¹¹⁵ Kerlin, Janelle A., ed. "Social enterprise: A global comparison." UPNE, (2009):102.

similar legislation.¹¹⁶ The regime of L3C is devised to cater the annual minimum distribution of private and get the PRIs from foundations. The social purposes are very important for them, not only for intentions of entrepreneurs to establish and the admission of L3C, but also for obtaining the PRIs and the resources from other private investors. Therefore, in the governance regime of L3C, the social purposes are main elements to be carried out, which scatter over the article of L3C and the operating agreement. Besides the article of L3C and the operating agreement, the governance regime of L3C is almost the same as LLC.

But from the view of the country, the L3C lacks the support from the federal. The position of legal system of L3C in the entire legal system of the U.S.A is not so high and it's just an Act enacted in several states but not a federal legislation. What's more, it just embeds in the Act of LLC and the DTI, but not an independent legal form. In reality, if the related law have no special mechanism to cater it and no the implement policy for them, the value of L3C will be a little.¹¹⁷ Just as the opinions of some scholars, federal PRI rules should be changed for catering the mechanism of L3C and improving its social and economic value.

The role of the new legal forms of social enterprise is not so important not only because of the limitations of them, but also because of the inertia of the traditional legal forms for entrepreneurs which are used to carry out the social goals. The data from the National Center for Charitable Statistics at the Urban Institute, suggests that commercial revenue was not only consistent with the largest income contributor to the nonprofits sectors, but also that it grew substantially during the past 20 years, which controls more than \$1 trillion in assets and earns approximately \$700 billion annually.¹¹⁸ In addition, since the emergence of "superphilanthropists", the way of traditional charity, which is an important part of nonprofits sectors, has some change:

¹¹⁶See Maura K. Flaherty. "A new vehicle for mission-driven work: is the low-profit limited liability company right for Oregon?" *Oregon Law Review*(2012):3.

¹¹⁷See Esposito, Robert T. "The social enterprise revolution in corporate law: a primer on emerging corporate entities in Europe and the United States and the case for benefit corporation." *William & Mary Business Law Review* 4.2 (2013).

¹¹⁸See Janelle A. Kerlin. "Social Enterprise in the United States and Europe: Understanding and Learning from the Differences." *Springer Voluntas*, (2006) 17:247–263; Jay Milbrandt. "A new form of business entity is needed to promote social entrepreneurship: the not-for-loss corporation." *J. Bus. Entrepreneurship & L.* (2008):4.

they are shaking thing up—a sign that they may be fed up with the status quo of non-profit activity, such as the Skoll Foundation and Revolution and.¹¹⁹ What's more, for the limits of the nonprofits sectors, some social entrepreneurs take the for profit corporations to realize their social goals, for example, Google and the Ford Motor Company created the “not-for-loss entity” to get the social return back.¹²⁰ The latter one can be seemed as a way of expanding the boundaries of corporate social responsibility. Thereby, to perform the functions of the new forms of social enterprise, on one hand, they should improve and perfect the new legal system of social enterprise, including the laws of social enterprise and the related law systems; on the other hand, as the traditional legal forms of social enterprise existing, they should popularize the new legal forms and broadening the scope of enacting the new legal forms.

In addition, the legal system of social enterprise in the U.S.A also learnt from the Europe. For example, the legal form of CIC originates from the U.K., but recently it is an intriguing development for the U.S.A-based international organizations.¹²¹ From the point of impact, it's too remote from the U.S.A to adopt this legal form for social enterprise by now, but the trend is a delightful phenomenon for the entrepreneurs in the U.S.A.

Despite that there are divers of limitations in the legal system of social enterprise in the U.S.A, the social legal system in the U.S.A is outstanding in the world, for its innovations to resolve social issues, its social and economic impact and its advanced theories. Therefore, it has become the sample of the world, not only the legislation and its implementation, but also the theories and its popularization.

3.6 The summary of the chapter and the enlightenments

Firstly, establish legal systems is an important way to improve the development of social enterprise

¹¹⁹See Shruti Rana. “Philanthropic innovation and creative capitalism: a historical and comparative perspective on social entrepreneurship and corporate social.” *Alabama Law Review*, 64.5(2013): 1121.

¹²⁰See Jay Milbrandt. “A new form of business entity is needed to promote social entrepreneurship: the not-for-loss corporation.” *J. Bus. Entrepreneurship & L.* (2008):11.

¹²¹See Raz, Keren G. “Toward an Improved Legal Form for Social Enterprise.” *NYU Rev. L. & Soc. Change* 36 (2012):15.

By the traces of the social enterprise, the legal system plays an important role in the development of social enterprise in Europe. During recent years, Many European countries have adopted national laws regulating social enterprise. For example, Belgium, Finland, France, Italy, Poland, Portugal and the UK have enacted social enterprise legal system for the development of social enterprises. For most of them, the legal systems have made a great contribution to the development of their social enterprises, especially in Italy and U.K, a boom of social enterprises driven by the new laws and great social and economic values created by social enterprises. The benefits brought by the legal system include legal identities, effective governances, multi-resources, and so on. In addition, the legal system coincides with the supporting policies, maximizes the functions of social enterprises in Europe. In the U.S.A, the new legal forms of social enterprise to some degree make up the limitations of the traditional social enterprise forms and offer more capital for the development of social enterprise. Therefore, by the new legal forms, the entrepreneurs may have more ways to address the social issues.

Secondly, the European Commission plays an important role in the development of the legal systems of social enterprise in Member States.

Beside the promotion of research and program support and finance support for social enterprises,¹²² the Europe Commission is a strong actor in the development of the social enterprise legal system in each Member State for the special relation between them. The mainly measures of Europe Commission to compel the development of social enterprise in the Member States can be listed as following: (1) legislating the Single Market Act: Twelve Levers to Boost Growth and Strengthen Confidence. The Act was set forth by the Commission in the April of 2011. It coincides with the related measures, which brought the success of the social cooperatives and CIC. Specifically, the Commission suggested that a comprehensive European legislation should be made to develop a framework for social investment

¹²²See Janelle A. Kerlin. "Social Enterprise in the United States and Europe: Understanding and Learning from the Differences." Springer *Voluntas* (2006) 17:247–263.

funds.¹²³ The suggestion works as a promotion to guide the Member States to develop social enterprises “by promoting societal concerns such as social, ethical, and environmental development over financial profit”,¹²⁴ so as to deal with the issue of unemployment and to get the boost growth. (2) Releasing “Social Business Initiative”. In order to operate against Poverty and Social Exclusion within the framework of the European Platform, the Europe Commission released “Social Business Initiative”, to guide the Member States to improve the social enterprise for the goal. The “Social Business Initiative” includes four main measures: firstly, the Commission suggested creating a regulatory framework at European level to increase private funding to social enterprise; secondly, the Commission suggested creating a public database of labels and certifications, so as to promote the mutual learning and capacity building among the national and regional level; thirdly, the Commission suggested the imperfection of the Statute to simplify the regulation of a European Cooperative Society and popularized the status of social cooperatives in all Member States; fourthly, suggesting the Member States to simplify the rules to aid to work integration and personal services, and to enhance the government procurement process for social and health services.¹²⁵ The legal measures aforementioned reflect the trend that the European Commission elevates social enterprise from the national level to the regional level by the way of legal suggestions, which served to highlight the role of the European Commission in the development of the social enterprise in Member States.

Thirdly, the new legal systems based on the limitations of former legal system.

By the experience of legal systems in Europe and the U.S.A, the new legal systems of social enterprise stem from the limitations of their former legal systems. For example, the new legal form of social cooperative in Italy was created on the base

¹²³ See Esposito, Robert T. “The social enterprise revolution in corporate law: a primer on emerging corporate entities in Europe and the United States and the case for benefit corporation.” William & Mary Business Law Review 4.2 (2013).

¹²⁴ See European commission. “Single Market Act: Twelve Levers to Boost Growth and Strengthen Confidence.” (2011).

<http://dropbox.curry.com/ShowNotesArchive/2012/06/NA-419-2012-06-21/Assets/EUROLand/single%20market%20act.pdf>, 2014-03-21 log in.

¹²⁵ See Esposito, Robert T. “The social enterprise revolution in corporate law: a primer on emerging corporate entities in Europe and the United States and the case for benefit corporation.” William & Mary Business Law Review 4.2 (2013).

of the limitations of the traditional social cooperative form; the L3C form in the U.S.A also stems from the limitations of traditional form of no-profit organizations and for-profit corporations. The purposes of establishing the new legal system are to realize the social goals of social entrepreneurs, for example, addressing the problem of unemployment for people with disabilities and other weak groups in the labor market. In deed, the new legal systems stem from the plights of the social problems which can't be resolved by the former legal forms. The new legal systems of social enterprise in Italy and the U.K dealt with the social problems and made a great positive social impact.

Fourthly, the models of the legal form are designed directly against the former states of social legal forms.

In Europe, the model forms of social enterprise are social cooperative and company. The classic countries which adopted the form of social cooperative are: Italy, France, Greece, and Poland; while the classic countries that adopted the form of company are: the U.K and Belgium.¹²⁶ On the whole, the social cooperative form dominates the Europe. The difference between the two forms and the former statutes of social enterprise in each country mainly decide the form it adopted. For the model of social cooperative, it characterizes by some degree of non profit constraint and democratic governance rules. While the model of company form characterizes by no distribute to its members and limit distributions to shareholders. In short, the former emphasizes on the people combination of the organization, and the latter emphasize on the organization. What's more, the legal tradition is an important element for selecting the legal form. For example, in Italy, the traditional social cooperative was born in 1970s, and has made a great success in addressing up the social issues. Thereby, the new social cooperative laws just to conquer the limitations of the former one and carry forward the traditional form of social cooperative. While in the U.K, the popular traditional forms for social entrepreneurs to realize social purposes is company, thereby the form of CIC based on the traditional form and integrates some

¹²⁶See Gerold Schwarz. "Social Firms in Europe."

http://www.dinf.ne.jp/doc/english/resource/employment/Social_Firms_in_Europe.html, 2014-03-12 log in.

reasonable element to make up the limitations of them. Therefore, most countries took new legal forms of social enterprise basing on the traditional forms and the needs of realities.

Despite that the legal forms of social enterprise are different, and even the legal forms are the same in some countries but the devices of the system are different from each other, on one hand, the trend is that the countries learn from each other's experience and lessons. What's more, there are some international guides about social enterprise from regional level to world level, for example, legal measures of social enterprise suggested by Europe Commission, and the International Cooperative Alliance (ICA) Principles which is also the unique specific legislation exists at European Community level currently. On the other hand, the social enterprise legal systems contain not only the common social nature, but also the characters of their own countries. Therefore, the enlightenments should be paid an attention to when we establish the social enterprise legal system in China.

4. The establishment of the social enterprise legal system in China

As aforementioned in the first chapter, it's very important to establish a legal system in China. To achieve this purpose, chapter two and chapter three have paved the way for it, with the theories and the practical experience of the implementation of the legal system. But for the distinctiveness in each country and the complex conditions in China, it's really difficult to apply the advanced theories and practical experience of social enterprise from other countries and regions into the establishment of the legal system of social enterprise in China. Therefore, the key of the establishment is to sinicize the theories and the practical experience of the implementation of the legal system and to establish a legal system adaptable to the realities of China.

4.1 The frame of the suggestions for the establishment

The purpose of the research is to offer the useful suggestions for relevant researches and legislations in China, the result of it won't be represented by the form of code, but just some suggestions centering on the main points of the establishment. While according to the ordinary structure of a code, the suggestions for the establishment of social enterprise legal system should be divided into three parts, during which the main issues of each part will be selected out and analyzed.

First part, analyze the general provisions, such as the purpose, the definition, the principles, the models of legal forms of social enterprise, and so on. The main purpose of this part is to draw out the outline of the frame, which will limit the scope of the research and conduct the following analysis. For example, the definition of social enterprise from the legal perspective focuses on the realities of the legal forms of quasi social enterprises, which is different from the definition in the second chapter that emphasizes on the academic analysis, offering a practical definition of social enterprise to delimit the boundary of the social enterprise and other organizations and provide the latter ones a specific way to transfer into the former one. For principles, they will run through the entire legal system and lead the establishment of the legal system, which will integrate diverse factors of the establishment.

Second part, divide several types of social enterprises based on the legal models. According to the definition defined by EMES, there is no a real social enterprise in China; but there are quasi social enterprises pursuing social and economic values. By the nature of social enterprise, they should divide into the genre of social enterprise. As we analyzed in the first chapter, the dilemma of the social economy in China mainly stems from the limitations of the current quasi social enterprises. Therefore, analyzing these legal forms and applying the advanced and adaptable legal forms integrated the needs of the realities in China to reform them for the purpose of establishing a uniform social enterprise legal system is very useful for the resolutions of social problems in China.

Third part, sort out the uniform supporting and regulation measures for various social enterprises. The term “social enterprise” is a genre organization that should be treated in the same supporting measures. After the analysis of the different kinds of social enterprises, they should be taken into the same criterion of supporting by the government and other social organizations, which should be stipulated in the social enterprise legal system. The means of supporting should learn a lesson from the advanced countries and be synthesized with the realities in China. Meanwhile, the functions of the legal system will lay on the security and execution of the regulation measures. In addition, the regulation regime will also favor the governance regimes in social enterprises.

The three parts constitute the substantial content of legal system and there are organic connections among them: the first part is the pandect; second part is the diversification of the conditions; the third part is the uniform treatment for all the social enterprises.

4.2 The main factors that should taken into account in the course of the establishment

For the need of China, the establishment of the legal system of social enterprises in China should integrate the experience of the advanced countries and the realities of China. Thereby, this guiding ideology should direct the main factors of the establishment and embed into the regimes of the legal system. Based on premise, the main factors of the establishment are listed as following: firstly, the purposes of the

legal system. On one hand, the purposes act as an important role in the legal system and all the regimes serving for them. On the other hand, they relate to the urgent social problems. In other word, they are the bridge between the social problems and their legal resolutions. Secondly, the current laws of quasi social enterprise in China. The legal system of social enterprises is not an independent law, but the integration of quasi laws and the enablement of the entire legal system works as a whole. Thereby, the current quasi laws of social enterprises in China should be embedded into the new legal system by the integration of the new laws. Thirdly, the definition of social enterprise in law. The definition of social enterprise in China decides the scope of the social enterprises which relate to the quasi laws to reform. Fourthly, the legal form of social enterprise. According to the opinion of Antonella Noya, the legal forms of social enterprise which developed in different legal systems can be divided into three models: “cooperative model”, “company model” and “open” form model”.¹²⁷ For the realities of the quasi organizations and the laws related to them, the legal system needs to integrate the three models and create a legal model adapted to the situations in China.

4.2.1 The purpose

Form the social legal system in Europe and in the U.S.A, the purposes in them are usually to pursuit the general community interest, despite that the descriptions are different. Under the purposes, there are some means to realize the purposes, which are against directly to the urgent social problems. For example, in Italian Law 381/1991, the purpose of the social cooperative is to pursue the general community interest in promoting human concerns and in the social integration of citizens; the means to realize it are: “a) the social cooperatives that carry out activities in the area of health, social or educational services; b) the social cooperatives that act as firms for integrating disadvantaged people in the labor market.” Another example is the purpose in the legal system of the U.K.. The purpose of the social enterprises in the U.K. is social objective. And the means to realize it is the business. The means in the

¹²⁷ See Antonella Noya. “The Chang Boundaries of Social Enterprises.” *Local Economic and Employment Development*, (2009): 31.

two countries are related to the urgent social problems: in Italy, the health, social and educational services are essential for the society and they need to be enhanced; another social problem is the unemployment of the disadvantaged people. Therefore, the laws set the purposes to address these problems for the general community interest.

In China, the purpose of establishment of the social enterprise legal system is the general society interest. At the present stage, China is going through a transitional staged, and all kinds of social problems boom quickly. But the following urgent social problems should be paid serious attention to: the unemployment of the disabled, the poverty, insufficiency of the social services for the elderly people, countryside, and so on. ¹²⁸These social problems are closely related to the general society interest and should be solidified to the means that could realize it.

4.2.2 The legal definition

The definition of social enterprise in China has been defined from academic perspective aforementioned. But from the legal perspective to define it is more complicated because that it involves not only the ordinary definitions of social enterprises in other regions, but also the reality in China, which includes the purpose, the scope and the related laws of it. The ordinary definitions in other regions and the academic definition of social enterprise in China have been discussed; the following problem is to analyze the scope of social enterprise in China.

For the scope of social enterprise, some scholars hold different opinions. Jin Jinping considered that in China, the most classic social enterprises are PNUs, Welfare Enterprises. ¹²⁹ Yu Xiaomin, Zhang Qiang and Lai Zuofu considered that, the social enterprises in China include PNUs, Welfare Enterprises, Private Education Institutions, and business corporations. ¹³⁰ In my opinion, according to the social and economic nature, as the social purpose of social enterprise and the academic definitions in China aforementioned in second chapter, there is no real social

¹²⁸See Pan Xiaojuan. "The first exploration of social enterprise." Chinese Public Administration, 7(2011):22.

¹²⁹See Jin Jinping. "Legal Myth on Emergence of Social Enterprises in China." Comparative Economic & Social Systems, 2009(4):129.

¹³⁰See Yu Xiaomin, Zhang Qiang and Lai Zuofu. "The Chinese social enterprises in the perspective of international comparison." Comparative Economic & Social Systems, 2011(1):158.

enterprise in China; there are some current quasi social enterprises: PNUs, Welfare Enterprise, SFCs, and some other non-profit quasi social enterprises. The details of the reasons will be illustrated in the following sections. In another word, although these organizations are not the real social enterprise according to the definitions in China aforementioned, the real social enterprises in the future most likely emerge among them. Therefore, the legal system should be based on these organizations and perfect them directly against their limitations.

4.2.3 The principle

The establishment of the legal system of social enterprise in China should comply with several principles in order to sinicize the experience from the advanced countries, perfect the limitations of the former laws for quasi social enterprises and ensure the new legal system would take effect in China.

Firstly, integrate the advanced experience of foreign countries and the realities of China

For making use of the advanced experience of foreign countries, we have analyzed the theories and the legal systems of some important countries. Sorting out the basic theories of social enterprise is to make a profound understanding of social enterprise and pave the way for the following research; the analysis of the legal systems of social enterprise may offer the samples and experience for the establishment of social enterprise legal system in China. But for the new legal system taking effect in China, we should integrate the experience of foreign countries and the realities of China. The reasons list as following : (1) the experience stems from the specific region and relate to the systemic conditions, such as culture, society, polity, and so on. Therefore, the experience won't take effect if China lacks of the crucial elements that are adaptable to the experience. (2) The realities in China are more complicate than other regions for its huge population and fast development. The experience from other regions may not be directly made use of. Thereby, the needs of Chinese realities compel us to integrate the advanced experience of foreign countries and the realities of China in the course of establishment.

Second, integrate the new law and the former laws

The new legal system is directly against the limitations of the former legal systems and integrates the new law and the former laws in an entire legal system. According to the definition aforementioned, the former laws for quasi social enterprises mainly include “Provisional Regulations for the Registration Administration of People-Run non-Enterprise Units”, “Measures for the Qualification Accreditation of Welfare Enterprises” and “Law of the People’s Republic of China on Specialized Farmers Cooperatives”. There are several points for the integration : (1) the new law deals with the limitations of the former laws. (2) The new law coordinates the former laws and optimizes the functions of them. (3) The new law draws the outline of the legal system and promotes the purposes, the functions and the measures of the legal system. (4) The former laws also make some improvement to pursuit the goal of the legal system. (5) Apart from reforming the former quasi social enterprises, the new law should make new criterion for entrepreneurs to establish new social enterprises. By doing so, the new legal system will work as a whole.

Thirdly, integrate the current conditions and the development of social enterprises in future

Now, China is in the transitional period and the conditions change quickly. The legal system targets not only the social problems merged by now, but also the social problems may emerge in the future. To get a clear visibility of the social problems, there are several elements need to take into consideration: (1) the traces of development of the society of the developed countries that China will experience. China is a developing country and is expected to be a developed country in mid 21st century. Thereby, the normal traces that the developed countries have experienced China will probably undergo and the social problems that have been existed in the developed countries may be encountered by China. So it needs to analyze the traces of development of the society of the developed countries and find out the rules of it, in order to get a visibility of social problems will merge in China in the future. (2) The characters of development in China. China has a large population, but a weak economic foundation with relatively inadequate resources per capita. According the basic national conditions, development in China has its special characters. Specifically,

the social problems emerged under the conditions are different from those from other regions. Therefore, the social problems under the special circumstances are also unique and relate to the conditions. The establishment of social enterprise legal system in China should also trace the characters and make a prognosis of the problems of the society in order to make a plan for the resolutions. (3) The targets of social enterprise. The targets of social enterprise are to resolve the social problems by now and in future, and the targets of the social enterprise decide the design of the legal system. Therefore, we should think about the social problems by now and in the future, and carry out some pertinent legal measures to resolve them. (4) The social trend of social enterprise. On one hand, the trend of social enterprise reflects the dynamic of the societies and the needs of them. On the other hand, the trend of social enterprises in developed countries, such as the U.K, Italy and the U.S.A, represent the advanced theories and practices of social enterprise. Therefore, the establishment in China should integrate the needs of the society in China and the trend of the social enterprise in the advanced countries to make the legal system have a forward looking, so that the legal system will satisfy the needs of the society in China.

4.2.4 The model

As aforementioned, the legal forms of social enterprise can be divided into three types. For the “cooperative model”, there is a quasi social enterprise called “Specialized Farmers Cooperatives” adopting the cooperative legal form. For the “company model”, there are two quasi social enterprises called “People-run Non-enterprise Unit”, “Welfare Enterprise”. For the “open model”, there is no related law for it.

For the special conditions in China, there are some quasi social enterprises which can be divided into “cooperative model” and “company model”. On one side, the numbers of these organizations are very big: by the end of February of 2014, the number of SFCs is 1,102,700;¹³¹ by the end of 2011, the number of Welfare

¹³¹ See Homepage of the State Administration for industry & commerce of P.R.C. “The report of Chinese market main body in April of 2014.” <http://www.saic.gov.cn/zwgk/tjzl/zhtj/xxzx/201405/P020140512381873057203.pdf>. 2014-05-26 log in.

Enterprises adds up to 21,500;¹³² by the end of 2013, the number of PNUs adds up to 255,000.¹³³ In addition, from the trend of the development, the numbers of the organizations keep on rising. On the other side, despite that there are plenty of limitations in these organizations, they perform many important functions in the development of society. Therefore, if we adopt “cooperative model” or “company model” for legal system of social enterprise in China, we will exclude some of these quasi social enterprises out of the social enterprise or change them completely, and it will waste huge cost to finish it, legislate new laws, and abolish the former legal regimes which have been performing great functions of addressing up social issues; if we choose the “open model”, the advantages of the current social enterprise will be reduced and their limitations will continue to exist. Thereby we should create a special mode of legal forms of social enterprise for the complicate situations in China.

The establishment of new legal system of is not to create a complete new legal system, but to integrate the organizations and set a new system for the new social enterprises. That's to said, the mode for this target should mix the three models aforementioned and create a new legal model of social enterprise in China: on one hand, improving the current quasi social enterprises: SFCs, Welfare Enterprises and PNUs, and then recognize their legal entities as social enterprise, which involve the cooperative model and company model; on the other hand, the new legal system should define criteria and outcomes for new social enterprises. The reasons for the mixed model list as following: firstly, this model will reduce the cost of legislation and enforcement of the laws. For the legislation, the mixed model contains a new law and some revisions of former law for quasi social enterprises; for the enforcement of new law, the mixed model needs some new measures for the whole new legal system and some revisions of the enforcement regimes. The cost of the model is much lower than a complete new legal system. In addition, this mixed model will make the new legal system take effect in reality. Secondly, the efficiency of the mixed model is high:

¹³² See Liu Jing, Shi Lirong. “The analysis of the policy reasons of shrinkage of the Welfare Enterprise.” “Economy & Management.” 10(2013):76.

¹³³ See The homepage of the Ministry of Civil Affairs of P.R.C. “The Ministry of Civil Affairs issued the statistical bulletin of the development of social services in 2013.” <http://www.mca.gov.cn/article/zwgk/mzyw/201406/20140600654488.shtml>, 2014-05-26 log in.

(1) it can make up the limitations of current laws. For the limitations of the current quasi social enterprises, they are the main driving force of the new legal system because they obstacle the resolutions of social problems. Making up the limitations will improve the efficiency of the quasi social enterprises to address the social issues.

(2) It can improve the efficiency of the social enterprises. Except for the social current legal entities for quasi social enterprises, the new legal system will offer social entrepreneurs a new legal form to realize their social purpose, which will improve the efficiency of the social economic. Thirdly, it makes the legal system of social enterprise works as a whole. The mixed model can integrate all the social enterprises and optimize their functional group, which will improve the efficiency of the social enterprises. Therefore, the mixed model caters the complicate situations in China, and integrates the new law and the former laws into an entire one that will improve the efficiency of social enterprises in China.

In short, China should adopt the mixed model for the legal system of social enterprise. Specifically, the legal system of social enterprise should contain several legal forms: the cooperative form for SFCs; the company form for Welfare Enterprises and PNU; the potential forms for other social activities, legally defined with respect to social outcomes. The three types of legal forms constitute the legal forms of social enterprise in China.

4.3 The regimes for types of social enterprises

As aforementioned, China should adopt the mixed model to establish the legal system. In the mixed model, on one hand, the regimes should sinicize the experience from advanced countries, including not only the legal forms but also the designs of them. On the other side, the legal system should take the realities of China into the consideration, especially the current legal system for quasi social enterprises. Therefore, the regimes for types of social enterprises will learn from the samples from advanced countries and reform the former regimes directly against limitations of them.

4.3.1 The regime for the SFCs—learning from the legal system of social cooperative in Italy

The regime of the SFCs established in 2006, with the “Law of the People’s Republic of China on Specialized Farmers Cooperatives” adopted at the 24th Meeting of the Standing Committee of the Tenth National People’s Congress of the People’s Republic of China, which is “enacted for the purpose of supporting and guiding the development of specialized farmers cooperatives, regulating their organization and behavior and protecting their lawful rights and interests and those of their members’, and promoting the development of agriculture and of the economy of rural areas.”¹³⁴ And the definition of it emphasizes “mutual-help”: they are “mutual-help economic organizations joined voluntarily and managed in a democratic manner by the producers and operators of the same kind of farm products or by the providers or users of services for the same kind of agricultural production and operation.”¹³⁵ The services usually are “purchasing the means of agricultural production, marketing, processing, transporting and storing farm products, and providing technologies and information related to agricultural production and operation.”¹³⁶ From the purpose, the definition and the activities scopes, SFCs are similar to the social cooperatives in Italy despite that the scopes of the members are different: the former limits in the scope of famers; the latter open to the members from all industries.

From the establishment of the regime of SFCs by now, the regime has been playing an important role in the promotion of the development of the country, the agriculture and the farmers. As the time goes by, the regimes need some reforms and to be embedded into the legal system of social enterprise. The reasons are listed as following: firstly, the incentive regime of SFCs is inefficient. Despite the number of the SFCs keeps on rising, the initiatives of famers to join the SFCs are weak.¹³⁷ For the history of People’s Commune in 50th of 20 century, most famers have no favorable impression of cooperatives. And the SFC is at their primary stage, and they haven’t showed up all the advantages but the limitations. Therefore, some famers don’t believe in the form of the SFCs even the having jointed in them but their agriculture

¹³⁴ Article 1 of “Law of the People’s Republic of China on Specialized Farmers Cooperatives” (2007).

¹³⁵ Article 2 of “Law of the People’s Republic of China on Specialized Farmers Cooperatives” (2007).

¹³⁶ Article 2 of “Law of the People’s Republic of China on Specialized Farmers Cooperatives” (2007).

¹³⁷ See Wang Fang. “The comparisons and enlightens between the agriculture cooperatives of China and America.” *Macroeconomic Management*, 9(2012):87.

produces still centre the Household Contract Responsibility System.¹³⁸ Secondly, the governances of the SFCs are inefficient. By the law, the members of the SFCs at least 80% are famers and the famers are short of the ability and experience to manage the SFCs, and their ability of commerce are weak. Another reason for the inefficiency is the unreasonable regime of the governance that lack of incentive regimes. As a result, the governances of the SFCs are inefficient and the enterprizations of the Cooperatives are rarely low. Thirdly, the SFCs lack of social entrepreneurs and innovations. For the fixed position of the SFCs, they hardly cater the needs of members by the way of market,¹³⁹ which is a better way for promoting the development of agriculture and of the economy of rural areas, especially under the conditions that are complicate and very difficulty to handle. What's more, the social entrepreneurs and innovations are based on the rules of markets, and they are the crucial elements to resolve the problems emerged in rural areas which are always a hard nuts to crack for the government and the market. Fourthly, the systematisms of the SFCs are low. On one hand, there is no regime to regulate the relation among SFCs so that there is no collaborations and association among them. One the other hand, the supporting regimes outside SFCs are not perfect. For example, there is no special regime for the investment from private investors outside the cooperatives so that the financial issue is a big problem for SFCs. These limitations work as a bottleneck in the development of the SFCs.

For the limitations, the development of SFCs stagnates for a long time. In the final analysis, the four reasons are due to SFCs lack of drivering force and regime of enterprise. Therefore, the SFCs should be improved with the advantages of social enterprise and reform to be real social enterprises in order to get a fast development and perform bigger function in promoting the development of agriculture and of the economy of rural areas.

To reform the SFCs, on one hand, we should take the "Law of the People's

¹³⁸See Wang Fang. "The comparisons and enlightens between the agriculture cooperatives of China and America." *Macroeconomic Management*, 9(2012):87.

¹³⁹See Li Huiyang. "The present situation and resolutions of the development of Chinses agriculture cooperatives." *The observation on the society*, 2(2014):35.

Republic of China on Specialized Farmers Cooperatives” into consideration, since it adopted to the realities of China and have been making a contribution to promoting the development of agriculture and the economy of rural areas; on the other hand, we should sinicizie the experience of the legal system of social cooperatives in Italy, for the following reasons: firstly, Italy is a advanced country in the research and practice of the legal system of social cooperatives, because that it is the earliest country to adopt legal form of social cooperative and have achieved a great success in the development of social economy; secondly, the social cooperatives in Italy are similar to these in China, including the legal form, the purpose of establishment, the relations among cooperatives, the members and other beneficiaries, and so on. But the specific regimes are more mature, especially the governance regime and the supporting regime, which are exactly the urgent supplement of the legal system of the SFCs in China. Thirdly, the social cooperatives in Italy involve in many industries, which is the trend that the form of cooperatives should develop to. Therefore, the legal form of social cooperative in Italy should be the sample of China to reform the SFCs into social enterprises so that they will be more adaptive to the development of market economy by means of finance, technology, new governance and marketing strategy,¹⁴⁰ which also the trends of the development of social cooperatives in Europe. To do so, there are several important points:

Firstly, optimizing the composition of the Specialized Farmers Cooperatives

Apart from the members from famers, the SFCs should recruit more members or managers who have the ability and experience of managing SFCs with the model of modern company, especial the social entrepreneurs. Because of the limited ability and experience and governance of famers, SFCs lack of modern governance and market activity. By Italian cooperative laws, there are no special provisions that limit the status of the member but endow SFCs with the rights to it in their own area, such as providing their articles. They prevent the cooperatives from deviating their nature by the means of limiting the outcome, income of the cooperatives, the ratio of the labor

¹⁴⁰See Hong Yanhua. “The experience and enlightenment of the governance of agriculture cooperatives in foreign countries.” *Economic Review*. 6(2012): 99.

cost of members, the distribution of dividends, and so on. Compared with the Law in China, the regime in Italy is more reasonable because that the designs in Italy favor the cooperatives to attract the members besides the famer members and the private investments.

For diversification of the members, there are several main regimes to reform : (1) the ratio of famer members in the Cooperatives. By the law, at least 80% of the member of SFCs should be famers.¹⁴¹ This article should be revised and reduce the ratio by the bottom line that sustains status which the famer members play a predominant role in the composition of the Cooperatives. But it shouldn't be abolished, because of the nature of SFCs and many regimes base on the dominate position of famer members. To eliminate the affection of this, we should learn from the legal system of social cooperatives in Italy: adding the provisions that sustain the purpose of the law by means of limiting the outcome, income of SFCs, the ratio of the labor cost of members, the distribution of dividends and other limits to protect their natures. (2) The rules of participation of non-famers members. To coordinate the change of the composition of SFCs, we should revise the rules of the participation of non-famers, including civil and enterprises, public institutions and organizations. The rules of participation contain the capital participation, management participation, participation of interests, and so on.

Secondly, improve the governance regime of SFCs

The inefficiency of the governance in SFCs is mainly due to the governance limitations of the regime. The governance regime of SFCs is similar to that of the non-profit organizations that lack of designs of enterprization governance so that SFCs have no initiatives to improve their governance. In the legal system of social cooperatives in Italy, the directors are more encouraged to take the innovations to create benefits for the cooperatives because of the incentive regime. Therefore, we should learn from Italy. There are several important points to revise: (1) it needs to improve the incentives of the regime to encourage managers to do their best to

¹⁴¹See Article 15 of "Law of the People's Republic of China on Specialized Farmers Cooperatives".

increase the economic benefit of SFCs. Apart from distributing the profits of SFCs, the managers should acquire the incentive pay. In addition, it should establish the stock stimulation mechanism for the managers in SFCs. (2) The governance structure should be diversification in order to be adoptive to different level of cooperatives. According to the Law of SFCs, there is one governance structure that constituted of a director or a board of directors, an executive supervisor or a board of supervisors and a membership assembly; “the director-general, director, the executive supervisor or members of the board of supervisors shall be elected at the membership assembly from among the members of the cooperative, and they shall exercise their functions and powers according to the provisions prescribed in the Law and the charter and shall be accountable to the membership assembly.”¹⁴² This unitary governance structure shows its maladjustment in the complicated realities in China and the situations should be reversed. By Italian cooperative laws, there are three models of governance structure: three-tier/default system, one-tier system, two-tier system, during which the three-tier system is the base. This design proves to be reasonable and plays an important role in the governance regime of social cooperatives. Thereby, we should adopt the rational content of governance structures in Italian cooperatives laws to cater the enterprization governance and the complicated situations in China, where many of SFCs are of small scale and have no need to establish the complete three-tier system governance structure.¹⁴³ Specifically, we should reform the current governance structure into the three-tier system, one-tier system, and two-tier system. The three-tier system is the default system and the base of the others, and the latter two systems are the derivations of the former. The three-tier system is just like the current regime but it should be implemented more strictly.¹⁴⁴ In the one-tier system, the supervisors are appointed by the directors from its members; at least one supervisor must be a registered auditor; and the supervisors constituted an internal

¹⁴²Article 26 of “Law of the People’s Republic of China on Specialized Farmers Cooperatives”.

¹⁴³See Wang Fang. “The comparisons and enlightens between the agriculture cooperatives of China and America.” *Macroeconomic Management*, 9(2012):87.

¹⁴⁴See Gui Wenlong, Zhu Qizhi, Fang Xianghong. “The investment and thinking of the conditions of development of the Famers Cooperatives under new situations.” *Heilongjiang Animal Husbandry and Veterinary Medicine*, 11(2012):31.

institution “auditing committee”. In the two-tier system, the supervisory board is constituted by the members appointed by the assembly from its members, but its duties are different from the three-tier system that include electing the managers, controlling their conduct, approving annual accounts, which are in the charge of the assembly in other two types of governance structures.¹⁴⁵

Thirdly, improve the financial regime

The fund shortage is a universal problem in SFCs.¹⁴⁶ It's due to the current fail to raise enough funds and no other efficient channels to get resource to support the development of SFCs. (1) The funds of the cooperatives mainly come from the capital contributions to be made by members, loans from the financial institutions and the profits of operation. The amount of the capital contributions to be made by members is small and it will be fetched back when a member withdraws from the cooperative. (2) SFCs is difficult to get a loan from the formal financial institutions for the strict conditions of applications.¹⁴⁷ (3) Since the small scale and inefficiency of the SFCs, the profits of them are usually very small, even negative in some cooperatives. For the promoting the development of SFCs, we should improve the financial regime of SFCs. In Italy, the efficient framework of financing social cooperatives is very important for its great successes, including the special arrangements of finance, grant schemes, the Marconi Fund for the new cooperatives, the special designs for abstracting the “capital” or “financing” members, the tax preference and the special loans with low rates of interest from cooperative federations and consortia.¹⁴⁸ The diversification of financial regime offers an infrastructure of support for the social cooperatives. Therefore, we should learn from Italy to create more resource approaches for SFCs. For the improvement, on one hand, the improvement should favor their Market adaptabilities, especially to promote development of their governances toward standardization and scientization; one the other hand, the financial regime in the Law

¹⁴⁵ See Fici, Antonio. “Italian co-operative law reform and co-operative principles.” Euricse, Italy (2010).P.P17-18

¹⁴⁶ See Li Huiyang. “The present situation and resolutions of the development of Chinses agriculture cooperatives.” The observation on the society, 2(2014):35.

¹⁴⁷ See Wang Fang. “The comparisons and enlightens between the agriculture cooperatives of China and America.” Macroeconomic Management, 9(2012):88.

¹⁴⁸ See Gosling, Paul. “Social Co-operatives in Italy: Lessons for the UK.” London: Social Enterprise London, (2002):9.

should be coordinated with the supporting measures outside the Law. Specifically, there are several points to revise in the Law: (1) improve the investment regime for the private investors. In the Law, there is no provision about the private investment. According to the Italian cooperative law, the law adopted the stock-cooperation, favoring the investment from private investor and the capital control. What's more, the stock-cooperation is the trend of the development of SFCs.¹⁴⁹ Thereby we should introduce the stock-cooperation regime for the reform of the Law. The key points of this regime are: A. quotas and shares. The law should provide basic rules about the quotas and shares, including the par value of each quotas and shares, the limited quotas for one member, purchase of cooperative's own quotas or shares, transferability of quotas or shares, and so on; B. the rights and obligations of capital members and other bond subscribers members, including the relations among them, the cooperative members and the cooperative, and so on ; C. the admission of new members, the withdrawal of members and the exclusion of members, including the requirements of members, the conditions of withdrawal and exclusion of members, the treatment of the death of the members, and so on; D. the rules of issuing shares and bonds. The stock-cooperation regime should coincide with the "Company Law of the People's Republic of China", "The Law of the People's Republic of China on Securities" and other related laws. In additional, to attract the private investment, it needs to rise capital caps, endow more them rights to make decisions rather than "one member one vote", which will balance elements of the labor and the capital in the cooperatives and perfect each other for development of the cooperatives. (2) Establish regime of cooperative federations and consortia. The Law in China lacks the regime of cooperative federations and consortia so that the corporations between cooperatives are rarely and they are hardly to get resource from the government or other institutions. Therefore, to Establish regime of cooperative federations and consortia, on one hand, the ability of negotiating with the government or other institutions will be enhanced and easier to get more resources for their development; on the other hand, they can collaborate with some programs and strengthen the market competitiveness

¹⁴⁹See Fici, Antonio. "Italian co-operative law reform and co-operative principles." Euricse, Italy (2010):17-18

to get more resources, even establish the funds of the federations and consortia. The key points for establishing the regime are: A. the purposes and the targets of federations and consortia; B. the principles of federations and consortia; C. the admission rules for cooperatives; D. the rules for the members and the organization; E. the rules of obligations and the functions of the federations and consortia; F. the supporting measures for the federations and consortia; G. the rules of the funds of the federations and consortia; H. legal responsibilities and implements for the regime.

After the perfecting of the Law of the People's Republic of China on Specialized Farmers Cooperatives, the SFCs will sustain the purpose of "supporting and guiding the development of specialized farmers cooperatives, regulating their organization and behavior and protecting their lawful rights and interests and those of their members', and promoting the development of agriculture and of the economy of rural areas",¹⁵⁰ by the means that are more commercial, more efficient, which can make use of the advantages of the market mechanism to realize the social purpose. In this meaning, we can incorporate SFCs into the system of social enterprise after finishing the reform. Accordingly, the Law of the People's Republic of China on Specialized Farmers Cooperatives will be a part of the social enterprise legal system, and SFCs will be benefited from the supporting measures for all the social enterprises.

4.3.2 The regime for the Welfare Enterprises and the PNUs—learning from the legal system of CIC in the U.K

Compared with the cooperative model, the company model is more adaptable to the social enterprises that emphasize on the means of commercialization and capital integrity but not human resource integrity. As aforementioned, in China, Welfare Enterprises and PNUs are quasi social enterprises despite that the former is a kind of special enterprise and the latter is a kind of social organization. For their characters of the capital integrity and the marketization of productive activities, we should adopt the company model to reform them into social enterprise.

4.3.2.1 Establishing the regime for the Welfare Enterprises

The Welfare Enterprises are special kinds of economic organizations that employ

¹⁵⁰Article 1 of "Law of the People's Republic of China on Specialized Farmers Cooperatives"(2007).

the labor of disabled individuals, and are distinguished by a set ratio of disabled individuals as a proportion of total employees.¹⁵¹ They have a long history in China and experience many adjustments of law and policy along with the reform of social and economic systems. They organized by government or collective for the aftercare of crippled veteran in 50th of 20 century under the context of planed economy. In 80th of 20 century, the Welfare Enterprises are also organized by state-owned large and medium-sized enterprises for the placement of injured workers and the crippled children of workers. From 90th of 20 century, according to the requirements of the economic system reform, the Welfare Enterprises unhook connections with the government and begin to adopt shareholding system, with diversification of shareholders.¹⁵²

The current legal system for the Welfare Enterprise mainly contains several laws. Firstly, “Law on the Protection of Disabled Persons of the People’s Republic of China”, enacted by the Standing Committee of the National People’s Congress in 1990, the first specific law to protect the legitimate rights and interests of the disabled and provides the disabled to use a combination of centralized and decentralized approaches, such as the Welfare Enterprise. Secondly, the “Regulation on the Employment of Disabled Persons”, issued by the State Council in 2007, it clarified the responsibilities and rights of the governments, business, and disabled employees in terms of employer responsibility, safeguard measures, employment services, and legal responsibility, which offered a legal base and a set of systematic supporting measures for the Welfare Enterprise. Thirdly, “Measures for Welfare Enterprise Accreditation of Qualification”, enacted by the Ministry of Civil Affairs, “set strict standards for application and definite regulations specifying the minimum proportion and number of persons with disabilities that a welfare enterprise must employ”,¹⁵³

¹⁵¹ See Weiyan Zhou, etc. “China Social Enterprise and Impact Investment Report”(2013):12.<http://www.serc-china.org/attachments/article/542/2013%20China%20Social%20Enterprise%20and%20Impact%20Investment%20Report.pdf>, 2014-06-23 log in.

¹⁵² See Liu Xiaoxia. “The revolution and institutional role of the Chinese social enterprises.” Journal of Minzu University of China (Philosophy and Social Sciences Edition), 6(2013):56.

¹⁵³ Weiyan Zhou, etc. “China Social Enterprise and Impact Investment Report”(2013):15.<http://www.serc-china.org/attachments/article/542/2013%20China%20Social%20Enterprise%20and%20Impact%20Investment%20Report.pdf>, 2014-06-23 log in.

which is the main law for the Welfare Enterprises. By this law, the ratio of disabled individuals as a proportion of total employees is 25% and the amount of them is no less than 10 in a Welfare Enterprise. Fourthly, the “Circular of Taxation on the Preferential Tax Policies for Facilitating the Employment of the Disabled People”, issued by the Ministry of Finance and the State Administration of Taxation in 2007, and “Circular on the Measures for the Collection and Management of Preferential Tax Policies to Stimulate the Employment of the Disabled”, issued by the Ministry of Administration of Taxation and the Ministry of Civil Affairs in 2007, provided the Welfare Enterprises are eligible to preferential policies for turnover tax and enterprise income tax. These laws constitute the legal system of the Welfare Enterprises.

But from 2005, despite of the promulgation of new laws and the continuous adjustments of supporting policy by the government, the development of the Welfare Enterprise has encountered a bottleneck. In 1995, the number of Welfare Enterprises reached 60,237, employing 939,000 workers; but in 2011, the number shrunk to 21,500, employing 628,000 workers.¹⁵⁴ Meanwhile the amount of the disabled in China rocketed from 51.64 million to 85.02 million from 1987 to 2010.¹⁵⁵ The reasons for the dilemmas of the Welfare Enterprise list as following:

Firstly, the development of the market and adjustments of the supporting measures. On one hand, the cost of placing the disabled keeps on increasing. For the minimum wage continuously rises and the cost of operating rises, such as the cost of daily management and the building of barrier-free structures, the cost of employment in the Welfare Enterprise continuously rises. On the other hand, some Welfare Enterprises aren't adaptive to the adjustments of supporting policies and laws. There are some adjustments along with the legislations and revisions of the law and policies during recent years: A. Lowering the threshold to entry for qualifying as a welfare

¹⁵⁴ See Liu Jing, Shi Lirong. “The analysis of the policy reasons of shrinkage of the Welfare Enterprise.” *Economy & Management*.10(2013):76.

¹⁵⁵ The homepage of China Disabled Persons Federation. “The literature of sampling studies of Chinese disabled in 1987.” http://www.cdpcf.org.cn/sytj/content/2008-04/07/content_30316030.htm, 2014-06-27 log in; Zhao Yanchao. “The China Disabled Persons Federation issues the newly amount of Chinese disable: the number of Chinese disable exceed 85.00 million.” *Disability in China*, 4(2012):20.

enterprise. The ratio of disabled persons as a proportion of total employees was lowered from over 50% of total workers to over 25%. B. Adjusting the connection of the tax preferences and the market. The adjustments include: to uniform provisions for preferential treatment of turnover tax and corporate income tax; to set the tax reduction or exemption ceiling at the fixed amount of 35,000 RMB per employee per year; the income of tax refund and tax reduction should be taxed by the rates of 25%. In fact, the adjustments reduce the margins of tax preference of the Welfare Enterprise.¹⁵⁶ Considering the two factors, the employers usually dismiss some disable workers to lighten the burden on the enterprises.

Secondly, the weaknesses of Welfare Enterprises. On one hand, compared with other ordinal enterprises, the lever of technology, management, the quality of the disabled workers in Welfare Enterprises are not so high, and their production equipments are backward. On the other hand, the regimes in Welfare Enterprises are not reasonable. The Welfare Enterprises are the outcome of the planned economy and still retain some remnants of the planned economy which usually embed in the regime of the enterprises. For example, the rules and regulations are not complete; the economic responsibilities are not so exact; strategic target and business objectives are not clear.¹⁵⁷ Thereby many of the Welfare Enterprises are uncompetitive in the open market and the ability of job aftercare of the disabled keep on reducing along with the market economy restructuring deepened constantly.

For the factors aforementioned, the development of Welfare Enterprises encounters predicament. In the final analysis, the fundamental reason for the dilemmas of the Welfare Enterprise is that the State pushed Welfare Enterprises in which the regimes are be disjointed the market rules, to the market that develops quickly and keeps on reforming deepened constantly. Therefore, the resolution to this situation is to perfect the regime in the Welfare Enterprise.

According to the great efforts having been made to the reform of the regime,

¹⁵⁶See Liu Jing, Shi Lirong. "The analysis of the policy reasons of shrinkage of the Welfare Enterprise." *Economy & Management*, 10(2013):76.

¹⁵⁷See Huang Jian, Sun Jing. "The mental analysis of service and development of Welfare Enterprise." *Social Welfare*, 11(2013):31.

the regime should be made a hundred-percent reform to coincide with the market economy restructuring. The CIC legal model in the UK is the reform direction of Welfare Enterprise and the reasons list as following:

Firstly, the company model is adaptable to the reform. On one side, it can reduce the cost of reform. The legal form of the Welfare Enterprise is enterprise. If it adopts the company legal form, it can remain most of the regime and continue to use the supporting measures outside the regime. On other side, it coincides with the target of the reform. The main target is to reform the former regime to adaptive to the market economy environment, and the company model is just designed for the market economy environment, thereby its mechanism will be suitable for the reform.

Secondly, CIC is the classical company model.¹⁵⁸ The CIC is a mature company legal form for social enterprise for its advanced theory and its current structure has achieved a considerable success in the U.K. In addition, the CIC is the trend of development of social enterprise so that the U.S.A learns from some of its regime.¹⁵⁹ Its reasonable regime can offer the reform of the Welfare Enterprise a good sample.

Thirdly, the CIC legal form is adaptable to resolve the limitations of the Welfare Enterprise. On one hand, the CIC is a so strict entity,¹⁶⁰ that it can satisfy the needs of the reform to perfect the entire regime according to the requirements of market economy. On the other hand, the CIC can endow the Welfare Enterprise more innovations and entrepreneurship directly against market competition. After the reform, the perfect regime and many supporting measures will ensure that the Welfare Enterprise will be a good platform for realizing the purposes of entrepreneurs and the participations of the entrepreneurs will make the Welfare Enterprise be more competitive.

Therefore, the reform should be based on the current relatively comprehensive legal system and the limitations of them, taking the CIC for sample to evolve into a

¹⁵⁸ See Antonella Noya. "The Changing Boundaries of Social Enterprises." *Local Economic and Employment Development*(2009):31.

¹⁵⁹ See Doeringer, Matthew F. "Fostering social enterprise: a historical and international analysis." *Duke J. Comp. & Int'l L.* 20 (2009): 15.

¹⁶⁰ See Esposito, Robert T. "The social enterprise revolution in corporate law: a primer on emerging corporate entities in Europe and the United States and the case for benefit corporation." *William & Mary Business Law Review* 4.2 (2013):18.

real social enterprise regime. There are several important points for the reform:

Firstly, define the purpose of the Welfare Enterprise. In the legal system of the Welfare Enterprise, there is no specific purpose of it despite that is very obvious: as an enterprise, it must be a for-profit corporation, which can perform all kinds of business activities and have no distribution constraints.¹⁶¹ But for converting into social enterprise and as a formulation of law for the Welfare Enterprise, it needs to be provided in the law because that it will be utilized in the designs of specific regimes, such as the accreditation. In the legal system of CIC, the defined of purpose of CIC law involves the defined of CIC, the relation between it and other forms of social enterprises, the relation between CIC and the community, and so on. Thereby the purpose is very important in the regime of the Welfare Enterprise. In “Rules on the Employment of Disabled Persons” enacted by the State Council in 2007, it stated the purpose of it is “in order to promote the employment of disabled persons, protect the labor rights of disabled persons”. As an important channel of the job aftercare the disabled, the Welfare Enterprise should comply with this purpose and emphasizes the characters of this means to realize the purpose. Therefore, the purpose of the regime of the Welfare Enterprise may state as: to promote the employment of disabled persons by enterprises with a set ratio of disabled individuals as a proportion of total employees. By this purpose, “Measures for Welfare Enterprise Accreditation of Qualification” can be utilized to accredit the Welfare Enterprise for promoting the employment of disabled persons and other supporting measures that are taken for the employment of disabled persons may serve it. What’s more, the State may take more measures to promote the Welfare Enterprise if they face serious problems.

Secondly, the sponsor of the Welfare Enterprise. Before 2007, the Ministry of Civil Affaire accredited the Welfare Enterprises which were sponsored by the State and the collective. By the “Circular of Taxation on the Preferential Tax Policies for Facilitating the Employment of the Disabled People”, issued by the Ministry of Finance and the State Administration of Taxation in 2007, and the “Measures for

¹⁶¹Jin Jinping. “Legal Myth on Emergence of Social Enterprises in China.” *Comparative Economic & Social Systems*, 2009(4):130.

Welfare Enterprise Accreditation of Qualification”, enacted by the Ministry of Civil Affairs, the qualified Welfare Enterprises for tax preferences extent to different forms of ownership domestic-funded enterprises. But there are still some of them sponsored by the state and the collective, which violates the basic principle that the social enterprises are autonomous, voluntary and private, organizations. Therefore, for the current situations, the Welfare Enterprise sponsored by the State or the collective should be restructured into joint-stock enterprises and convert into social enterprises.

Thirdly, the governance regime. The inefficiency of governance is one of the most serious problems in the Welfare Enterprise. It leads to the incompetent of the Welfare Enterprise and the ability of job aftercare of the disabled keep on reducing. The governance regime of CIC is famous for its strictness so that it will give a good sample for the reform of the Welfare Enterprise. In China, there are several specific legal forms for domestic-funded enterprise: Sole Proprietorship Enterprise; Partnership Enterprises; Company, including Limited Liability Company, Wholly State-owned Company, and Joint Stock Limited Company. Among these legal forms, all may be utilized to form a Welfare Enterprise except the form of Wholly State-owned Company and these forms have their respective governance regime. Regardless of the specific legal form, the governance regimes of them should integrate the policy advantages and the requirements of marketization to refined the current governance regimes, by the way of making a uniform governance regime and providing in the articles of incorporation.

The key points for the reform of the governance regime are: A. the articles of corporation should provide the purpose of the Welfare Enterprise. In the legal system of CIC, there is a Community Interest Statement to limit their purposes.¹⁶² But there is no special legal form for the Welfare Enterprise, the article of the Welfare Enterprise should state the purpose of it in order to prevent their activities from violating the purpose. B. To integrate the incentive mechanism and entrepreneurship. Since having enlarging the scope of sponsor, many social entrepreneurs sponsor

¹⁶²See Esposito, Robert T. “The social enterprise revolution in corporate law: a primer on emerging corporate entities in Europe and the United States and the case for benefit corporation.” William & Mary Business Law Review 4.2 (2013).

Welfare Enterprises or invest them. They pour the money and vigor into the industry of the Welfare Enterprise. But most Welfare Enterprises lack incentive mechanism to encourage the directors to improve the efficiency of the governance. The measures include clearly defined rights and responsibilities, equity incentives, participation in the profit, and so on. C. To promote the participatory of the disabled workers in the governance regime. To make the decision-making more democratic, it needs to perform the function of Workers Congress and the trade union, with adequate participatory of the disabled workers. It will favor the interest of the disabled workers and arouse their enthusiasm and innovations to take part in the governance. D. To establish an efficient relation between the governance and the regulation form the institutions. In the legal system of CIC, the Regulator's intentions about the governance of the CIC usually are realized through the relation between the governance and the regulation. Therefore, we should establish the regimes like annual reports, Community Interest, and so on, to put the governance into the scope of the regulation.

Fourthly, the financial regime. The capital shortage is one of the most serious problems against the development of the Welfare Enterprise,¹⁶³ and it has urgent need to refine the financial regime of it. In the financial regime of CIC, there are many designs worthy to learn. For the needs of the regime, following designs should be taken into consider: A. to establish the regime of asset lock. According the legal system of CIC, the asset lock regime includes several points: to set certain requirements on the transfer of assets; to set certain requirements on restrictions on the return assets to members; to include the asset lock in the scope of regulation. B. To refine the mechanism of distribution. By the current laws, the Welfare Enterprises are similar to for-profit corporations, and there is no distribution constraint for it. It's not reasonable because that their social purpose will be vague. Thereby some constraint should be put on the distribution of profit. C. To refine the regime for private investment. There are several points for the regime: to include stakeholder

¹⁶³See Huang Jian, Sun Jing. "The mental analysis of service and development of Welfare Enterprise." *Social Welfare*, 11(2013):31.

groups in their decision-making processes; to set the restrictions on the payment of dividends; to set the rules of caps for dividends. The payment of dividends is different from the distribution of profit to members and it is just limited by the cap rather than the constraint of distribution of profit.

The intention of the reform of the Welfare Enterprise is to establish a regime for it. Despite that the regime is very complicated, it just works as a part of the legal system of social enterprise and it needs to be completed with the uniform supporting measures and regulations.

4.3.2.2 The regime for People-run Non-enterprise Units

By article 2 of “Provisional Regulations for the Registration Administration of “People-run Non-enterprise Units(PNUs, 民办非企业单位), which is the main law for the PNUs and promulgated by the State Council in 1998, PNUs, referred to in these Regulations mean enterprise institutions, societies and other social forces as well as social organizations established with non-state-owned assets by individual citizens for non-profit social services.”¹⁶⁴

From 1998, PNUs have been developing quickly. By the end of 2013, the number of PNUs adds up to 255,000¹⁶⁵, involving the fields of technology services, ecological environments, education, health service, community service, culture, sports, business services, religion, and so on. The PNUs have made a great contribution to the economy and society.

As the reform of market-oriented economy regime of China is deepening constantly, the PNUs encounter some difficulties:

Firstly, they struggle to survive and develop. In 2006, the increase value of all PNUs is 726,092.3 yuan, with the average for each unit 45,000 yuan; Also, a survey in Shanghai shows that most PNUs in Shanghai had the problem of poor financial situation, 72.2% of which could hardly survive 10.1% of which had a large deficit and 7.6% of them could make meager profit.¹⁶⁶ This situation reveals the plights of the

¹⁶⁴ “Provisional Regulations for the Registration Administration of People-Run non-Enterprise Units”(1998).

¹⁶⁵ See The homepage of the Ministry of Civil Affairs of P.R.C. “The Ministry of Civil Affairs issued the statistical bulletin of the development of social services in 2013.”

<http://www.mca.gov.cn/article/zwgk/mzyw/201406/20140600654488.shtml>, 2014-05-26 log in.

¹⁶⁶ See Zhao Libo, Zhang zhiqin. “The consideration of the promotion of the development of the People-Run

PNUs in China.

Secondly, the developments of them are imbalanced. A. the involved field is imbalanced. By the end of 2013, the amount of PNUs from the field of education is 145,210, while the total of them is just 255,000.¹⁶⁷ This means that the proportion of PNUs scattering in other fields is rarely small. B. the sponsors from different ownerships are imbalanced. In 2004, 48.4% of the sponsors are from state owned enterprise or institutions, however the real civil run PNUs are less than 30%.¹⁶⁸ C. the scale of them is imbalanced. In 2012, there are 239 province level PNUs in Jiangsu, among which 21% is ultra-billion yuan enterprises while 76% is less than 10 million yuan scale enterprises.¹⁶⁹ The imbalanced developments of PNUs indicate that the resources in these fields aren't allocated well and efficiently, meanwhile the situations and that the social problems distribute every field and the civil doesn't have enough resource to resolve them.

The dilemmas of PNUs are due to the fast development of China's economy and society, as well as limitations of the regime of the PNUs in China. Since the former is irreversible, we should dedicate to the reform of the regime. To do so, we should analyze the reasons of forming such a regime: A. The inefficient regime and the lack of supports mainly lead to the trudge of the PNUs. There is no specific legal form but the common legal forms for them, so the specialties of them may not be coincided with the ordinal legal forms. For the fixed position of non-profit, there are not enough supporting measures for them. These are the reasons that lead to their growing pains. B. The tendentiousness of supporting measures leads to the imbalanced development. For example, the article 51 of the "Law of Promotion of Privately-run Schools" provides that "the fund providers may obtain a reasonable amount of requital from the cash surplus of the school."¹⁷⁰ While, for other fields, there no analogous supporting

non-Enterprise Units." *Journal of Fujian Party School*, 3(2009):54.

¹⁶⁷ See The homepage of the Ministry of Civil Affairs of P.R.C. "The Ministry of Civil Affairs issued the statistical bulletin of the development of social services in 2013."

<http://www.mca.gov.cn/article/zwgk/mzyw/201406/20140600654488.shtml>, 2014-05-26 log in.

¹⁶⁸ See Zhao Libo. "The People-run Non-enterprise Units: the current situations, problems and development." *Chinese Public Administration*, 9(2008):102.

¹⁶⁹ See Sun Bin. "The countermeasure research on the promotion of the development of People-run Non-enterprise Units Research of Administration of NPOs at the present stage." 11 (2012): 19.

¹⁷⁰ "Law of Promotion of Privately-run Schools"(2002).

measures with it. As a result, the investment tends to concentrate on the field of education.

Basing on the limitations of the PNUs, we should learn from legal system of CIC to reform the regime. The reasons are listed as following: A. the purpose and functions of the two organizations are alike: to pursue the benefit of society through the market. The allied nature and means to realize the purpose raise the probability of a successful and economical reform. B. The legal system of CIC may give a useful sample for the reform of PNUs. On one hand, the aim of the reform is to establish an efficient legal system for the PNUs and strengthen their abilities of providing social services. On the other hand, the legal system of CIC is base on the requirements of the market-oriented economy and its governance regime and finance regime will favor the improvement of the efficiency of the PNUs. For example, the regime of profit distribution will give a sample to reform the imbalanced profit distribution of the PNUs. Thereby it's a good choice to reform the PNUs with the sample of CIC.

The key points to reform the regime of the PNUs are listed as following:

Firstly, sustain the character of non-profit. By the definition of PNUs, it's a kind of non-profit social organizations. According to article 2 of the "Non-governmental Non-profit Organization Accounting System", promulgated by the Ministry of Finance in 2004, "non-profit" means: A. the organization does not run for the principle and purpose of profit; B. the fund provider of the organization must not acquire the economic returns; C. the fund provider of the organization could not own the ownership of the organization. But in reality, the structure of income threatens the non-profit character. Taking year 2002 for example, 95.7% of daily income of the PNUs comes from fees, while less than 5% of the income comes from other supporting resources, such as the donations and subsidies from institutions.¹⁷¹ Therefore, by the income structure, the character of non-profit is close to ordinary enterprise with the specialty of pursuit of social benefit. In this perspective, the PNUs are similar to CIC. To help them become real social enterprises, regarding to the

¹⁷¹ See Deng Shengguo. "The analysis on characteristic and role of People-run Non-enterprise Units." China Soft Science, 9(2006):22.

specific requirements of CIC, the regime should protect the non-profit by setting the definition requirements of “non-profit” and by refining the regime of profit distribution constraint, including the PNUs in the field of education.

Secondly, reform the governance regime. The legal entity of People-run Non-enterprise contains three specific legal forms: People-run Non-enterprise Unit (legal entity), People-run Non-enterprise Unit (partnership) and People-run Non-enterprise Unit (individual). According to the legal forms, inside the PNUs, each of them has a systematic governance regime to regulate them. Outside the PNUs, there should be regulations from both the registration administration organ and the competent business unit. By the article 19 of the “Provisional Regulations for the Registration Administration of PNUs”, the “registration administration organ shall perform the following functions and responsibilities of supervision and administration: A. It shall be responsible for the registration of the establishment, change and nullification of PNUs. B. It shall conduct annual inspection of PNUs; C. It shall carry out supervision and inspection of questions of PNUs in violation of these Regulations and impose administrative penalty on PNUs for acts in violation of these Regulations.”¹⁷² And by the article 20, the “competent business unit shall perform the following functions and responsibilities of supervision and administration: A. It shall be responsible for the examination prior to the registration of establishment, change and nullification of PNUs; B. It shall conduct supervision and provide guidance for PNUs in abiding by the Constitution, laws, regulations and state policies and carrying out of activities pursuant to the articles of association; C. It shall be responsible for the preliminary examination of annual inspection of PNUs; D. It shall assist the registration administration organ and other departments concerned in the investigation and handling of illegal acts of PNUs; E. It shall, in conjunction with relevant organs, provide guidance to PNUs in settlement matters.”¹⁷³ But because of their limited manpower and material resources, these regulations perform practically no function,

¹⁷² “Provisional Regulations for the Registration Administration of People-Run non-Enterprise Units”(1998).

¹⁷³ “Provisional Regulations for the Registration Administration of People-Run non-Enterprise Units”(1998).

especially when related to civil affairs departments at the grass-roots level.¹⁷⁴ Thereby the governance of some PNUs is inefficient. To refine this regime, learning from the legal system of CIC can be of great help. On one hand, we should perfect the regime of the modern financial control system, personnel management system and reasonable governance structure; on the other hand, we should establish a reasonable relation between the regulations and governance regime and make the regulations work an efficient supervisor outside the PNUs.

Thirdly, refine the profit distribution regime. By the article 21 of the “Provisional Regulations for the Registration Administration of PNUs”, “the sources of assets of PNUs must be legitimate. No unit or individual shall encroach on, share (divide) in private or divert the assets of a PNUs to other purposes.”¹⁷⁵ It means that in normal occasions there is no profit distribution in the PNUs with the exception that “the fund providers may obtain a reasonable amount of requital from the cash surplus of the school.”¹⁷⁶ But in reality, this regime becomes an obstacle of attracting private investment. In the legal system of CIC, the profit distributions are allowed, even the dividends are not limited by profit distributions constraint, but by the dividends caps, which acquire some investment from private investors without violating its social purpose. It seems that social enterprises regulate profit and dividends to prevent social enterprises’ pursuit of maximum profit while in the process overlook other social goals.¹⁷⁷ Therefore, in order to encourage the private investment to conquer the fund shortage of the PNUs and balance and diverse the supporting measures, we should allow the profit distributions but it should be constraint. In addition, specific measures should be carried out for profit distribution and the constraints should be formulated in the law.

The suggestions for the regime of PNUs are just some key points despite that it should be systematic. But these suggestions will favor to resolve the current problems

¹⁷⁴ See Deng Shengguo. “The People-run Non-enterprise Units and the development of China social undertakings.” *Xue Hui*, 12(2005):20.

¹⁷⁵ “Provisional Regulations for the Registration Administration of People-Run non-Enterprise Units”(1998).

¹⁷⁶ “Law of Promotion of Privately-run Schools”(2002).

¹⁷⁷ See Weiyan Zhou, etc. “China Social Enterprise and Impact Investment Report”(2013):26.

<http://www.serc-china.org/attachments/article/542/2013%20China%20Social%20Enterprise%20and%20Impact%20Investment%20Report.pdf>, 2014-06-23 log in.

they are facing and convert them into real social enterprises.

4.3. 3 the open model for new social enterprises—learning from the legal system in Italy

Besides the forms of Welfare Enterprises, Specialized Farmers Cooperatives (SFCs, 农民专业合作社), as aforementioned in the first chapter, there are still many quasi social enterprises which are realizing their social purposes through business way, under the context of the shift of Chinese government from control-oriented administration to service-oriented administration and plenty of public services are provided by civil organizations.¹⁷⁸ These organizations are mostly the grassroots organizations of third sectors. On one hand, their market competitiveness is weak. Their scales are small, and their levels of governance, autonomy, professionalization and service are low. On the other hand, most of them face the financing difficulty. As vague legal entities, they lack the supports from the institutions and the government, the donations and the investments from private investors. But their major competitive disadvantage is social entrepreneurship and innovations, with which they can acquire enthusiasm and penetration to realize the social goals.

According to the current legal system, none of the existing categories of organization sufficiently reflects the definition and functional needs of these organizations. But in reality, they're usually subject to the laws for non-profit organizations. For their sponsors are civil, they are difficult to get the supporting and just rely on the fees from social activities which are limited in certain scopes. In other words, the main obstacle of them is the shortage of an adaptive legal entity: A. the current organizational structure of social enterprises could not give a clear concept of them; B. there are substantive institutional obstacles in adopting nonprofit organizations as the organizational structure for them.¹⁷⁹ Therefore, for their characters are similar to social enterprises, it is legitimate to establish a regime of social enterprise for them.

¹⁷⁸See Culture and Education Section British Embassy, "The general report of social enterprise in China(2008)", http://dsi.britishcouncil.org.cn/images/BC_China_Social_Enterprise_Research_Report.pdf, 2013-04-07 log in.

¹⁷⁹See Lee, Rebecca. "The Emergence of Social Enterprises in China: The Quest for Space and Legitimacy." *Tsinghua China L. Rev.* 2 (2009): 90.

Since the legal forms for Welfare Enterprises, SFCs and PNU, as aforementioned have been established without the existing categories of organizations, we should adopt an open model to integrate all of these organizations, which we can learn from Italy. As we know, in 2006, Italy passed a law on social enterprises, named Legislative Decree 24, No.155, without a special legal form prescribed as preferential or mandatory, provided that the organizations are formed and operated as social enterprises.¹⁸⁰ The situation is similar to what we are facing currently. Thus we could utilize the open model in Italy to establish a regime for the rest quasi social enterprises.

The characters of the open model in Italy are: A. they highlighted the precious definition of one type of enterprise transferring into a social enterprise; B. forms and governance models are more relevant in this situation than in others' and thus attach a different value to the choice of this model; C. there is no need to establish different legal forms, which may operate in the same area of interest for equivalent results. Different legal forms may adopt comparable governance models despite their diversity.¹⁸¹ The characters of the open model draw an outline of the establishment.

Learning from the Experiences from Italy, the key points of the regime for other social enterprises in China should be listed as following:

Firstly, set the social purpose for the social enterprises. The social purpose reflects the needs of the society and it's the goal of the regime. Regarding to the current realities of China, the goal is to pursue social benefits and this should be clarified as the following implications: A. the management of health and social-sanitary care, education, poverty alleviation, protection of the environment and the ecosystem, valorization of culture patrimony, the care for the elderly, the public services for the agriculture, countryside and farmers, and the services for the religion. B. provide employments for the vulnerable groups in agricultural, industrial, commercial or service activities. The vulnerable groups include: the disabled persons,

¹⁸⁰See Antonella Noya. "The Changing Boundaries of Social Enterprises." Local Economic and Employment Development(2009):50.

¹⁸¹See Antonella Noya. "The Changing Boundaries of Social Enterprises." Local Economic and Employment Development(2009):50.

the mentally ill, drug addicts, alcoholics and former prisoners. The issues are urgently to address up.

Secondly, implement the operational model. With a character differing from non-profit, the operational model of social enterprises should utilize the means and disciplines of business and the rules of market. The implication of it includes: A. the business activities should be continuous. B. The income of the commercial activities should be an important part of the resource to the social enterprises. C. The legal forms for them could be all kinds of enterprise legal forms by the current laws in China, including entity, partnership and individual. D. the governance regimes should be different from the ordinary ones: on one hand, the governance regime should comply with the provisions of respective law; on the other hand, it should coincide with the special rules for social enterprise. For example, it should satisfy the requirements of the regulation: the article of social enterprises should state the social purpose of them.

Thirdly, set the profit distribution constraints. From one perspective, the regime of profit distribution constraints makes the “social profit” concrete, and it’s the rational basis on which we judge whether a business is a social enterprise.¹⁸² On the other hand, it’s an important method to attract investments from private investor. According to the imbalanced realities in China, the regimes for different kinds of social enterprise may provide the respective proportion of the profit distribution, thus to allocate the resources in different fields. The profit distribution constraints should be divided into two kinds: A. the constraints on the members; B. the constraints on the investors.

What’s more, the sponsor should be private entity or individual. For the particular ownerships in China, some of the state sponsors are non-profits.¹⁸³ But by the common principles of social enterprises in other regions, the social enterprise

¹⁸² See Weiyan Zhou, etc. “China Social Enterprise and Impact Investment Report.” (2013):12.
<http://www.serc-china.org/attachments/article/542/2013%20China%20Social%20Enterprise%20and%20Impact%20Investment%20Report.pdf>, 2014-06-23 log in.

¹⁸³ See Zhao Libo. “The People-run Non-enterprise Units: current situations, problems and development.” Chinese Public Administration, 9(2008):102.

should be launched by private groups or individuals.¹⁸⁴ Therefore, the social enterprise also should be founded by private groups or individuals. To cater this requirement, the existing state own quasi social enterprises couldn't transfer into social enterprises unless they change the ownerships of the organizations.

The regime for other quasi social enterprises is an important part of the social enterprise legal system. It mainly integrates the experience of the social enterprise legal system in Italy and the realities in China, thus reflects the trend of the development of social enterprise and will be adaptable to the China. The regime will be applied by the new social enterprises and the existing social organizations that would like to convert themselves into social enterprises. Thereby some designs of it accommodate itself to the existing legal organizations and work as a transition regime. As time goes by, it will be revised to a more reasonable and perfect one according to the requirements of the real social enterprises

4.4 The supporting regime and the regulation regime

Comparing to the for-profit corporations, the social enterprise is limited by the fields of activities and the profit distribution constraints. Instead, the supporting measures favor social enterprises. To help them avoiding violating the social purpose meanwhile acquiring the preference policies, the government must regulate them according to the laws.

For the intention of the designs of the establishment, the supporting regime and the regulation regime are uniform despite some existing special designs in the respective regimes according to their specifieness.

4.4.1 The supporting regime

According to legal systems of social enterprise in other regions, the supporting measures are usually as followed:

Firstly, tax preferences. The tax preferences are important supporting measures for social enterprises. The qualified social enterprises are usually eligible to tax preferences. The margin of preferences is diverse in different countries. For example,

¹⁸⁴See Nyssens, Marthe, ed. "Social enterprise: At the crossroads of market, public policies and civil society." Routledge, (2007):6.

in Italy, the reserves, annual to the Marconi mutual and private donations to social enterprises are not taxed; the rate of VAT is nil or 4%; the tax rate of company income are lower than ordinary corporations; disadvantaged members of the labour market are exempt from payment of national insurance contributions; tax benefits favor the buyers of solidarity bonds issued by social enterprises.¹⁸⁵ There are also some mechanisms of tax preferences for promoting social enterprises to acquire the grants or investment from funds, for example in the legal system of L3C in the U.S.A, there is a mechanism for L3C to acquire the PRIs.¹⁸⁶

Secondly, financial measures. The financial support usually divides into grants, the investments from funds, low rate loans from the consortia, the private investments, and the private donations which are not taxed.

Thirdly, the preferential purchase. The preferential purchase by government and institutions is very important for the development of social enterprises and it can offer stable incomes for social enterprises.

Fourthly, the assist from the consortia. In Italy, the consortia can offer special loans with low rates of interest through regional agreements with banks, which is very important for the new supporting ones. In addition, the consortia can offer support for the social enterprises, such as training programmers for local authorities and supporting the creation of social entrepreneurship.¹⁸⁷

The supporting measures are systematic and efficient in countries with advanced social enterprise legal system, such as Italy and the U.S.A. While in China, the current regime of supporting measures for non-profit is rarely immature. A. It lacks systematicness. On one hand, the category of non-profit organizations is not a uniform one, neither the competent business units nor all the relevant laws; diverse non-profit organizations have their respective competent business units and each industry usually has its special provisions to regulate. While the supporting measures

¹⁸⁵ See Gosling, Paul. "Social Co-operatives in Italy: Lessons for the UK." London: Social Enterprise London, (2002):9-10.

¹⁸⁶ See Esposito, Robert T. "The social enterprise revolution in corporate law: a primer on emerging corporate entities in Europe and the United States and the case for benefit corporation." William & Mary Business Law Review 4.2 (2013):21.

¹⁸⁷ See Gosling, Paul. "Social Co-operatives in Italy: Lessons for the UK." London: Social Enterprise London, (2002):11.

of the non-profit organizations are affiliated to respective competent business units and the laws. On the other hand, the types of supporting measures mainly rely on the tax preferences, financial allocations and subsidy from the local governments,¹⁸⁸ which exclude the grassroots NGOs. The amount of other supports is very small. B. The amount of support is small. Taking the PNUs for example, in 2002, 95.7% of daily income of comes from fees, while less than 5% of the income comes from other support;¹⁸⁹ while besides civil run schools and civil run hospitals, other PNUs aren't eligible to tax preference. C. The allocations are not reasonable. Taking PNUs for example, on one hand, the margin of preferences of public institution is much larger than that of PNUs; on the other hand, the supporting measures are imbalanced and unfair. As aforementioned, besides civil run schools and civil run hospitals, other PNUs aren't eligible to tax preference and the fund providers may obtain a reasonable amount of requital from the cash surplus of the school, while other PNUs are not eligible to tax preference.¹⁹⁰

For the limitations existing in the current supporting measures for non-profit organizations, it is urgent and important to establish a reasonable regime of supporting measures for the social enterprises. There are several important points for the establishment of this regime.

Firstly, base on tax and financial preferences from the government. Despite that there are plenty of preference measures, we should design a regime like this according to the reality as following: A. the social enterprises are on their primary stage. For divers of the limitations, their ability to acquire enough investments from the foundations or private investors are rarely weak. B. Other supporting measures are immature in China. The foundations are on their primary stage and the regulation is really a big problem. Thereby it can't work as a main supporting measure. The private investments mainly focus on profit industries, and the ability of social enterprises to

¹⁸⁸See Liu Chunxiang. "The countermeasure of the governance and problems of the non-profit organizations in China." *Journal of Insurance Professional College*, 3 (2006): 35.

¹⁸⁹See Deng Shengguo. "The analysis on characteristic and role of People-run Non-enterprise Units." *China Soft Science*, 9(2006):22.

¹⁹⁰See Sun Bin. "The countermeasure research on the promotion of the development of People-run Non-enterprise Units Research of Administration of NPOs at the present stage, 11 (2012): 20.

profit in China is so weak and immature for their purposes of establishment. Thus the private investments can't be an important supporting measure. Besides these measures, there is no other efficient supporting in China now. C. The tax and financial preferences measures are more stable and sustainable, thus more adaptable to the social enterprises in their initial phases.

Secondly, mobilizing the private investment –experience from L3C. The design of L3C for acquiring the PRIs is ingenious. It establishes incidence relations among the tax preferences, PRIs and the purpose of the L3C, with which it encourages the private investors to invest L3Cs and favors the tax preferences to promote the development of L3Cs. According to the situation that foundations are seldom in the non-profit organizations, to compel the private foundations to invest in the social enterprises, we should establish the same mechanism in the regime. A. The laws permit that foundation to count that grant towards a certain ratio of the foundation's assets it is required to distribute annually, on pain of excise taxes and potential loss of tax-exempt status; B. The tax law should provide foundations which invest in social enterprise are subject to a low or nil tax rates.¹⁹¹

Thirdly, establish the consortia. As mentioned above, the consortia regime of social enterprises is very important for the development of social enterprises. A. establish a regime for the consortia of social enterprise, including the purpose, the principles, the admission and exit rules, the rules of activities, the responsibilities, and so on. B. establish the connections among the local governments, banks and the consortia, developing the corporations between them. C. build the relations between the consortia and other institutions, in order to develop an environment for the social enterprises.

Fourthly, build the preference relation with governments and institutions. The preferential procurement by government and institutions is very important for the development of social enterprises, especially in the primary stage of social enterprises development in China. The “Government Procurement Law of the People's Republic

¹⁹¹ See Esposito, Robert T. “The social enterprise revolution in corporate law: a primer on emerging corporate entities in Europe and the United States and the case for benefit corporation.” William & Mary Business Law Review 4.2 (2013):21.

of China” should provide some favorable terms for social enterprises to become the suppliers of the government departments, institutions and public organizations at all levels.

Fifthly, integrate and adjust the supporting measures of the social enterprise. For the current supporting measures in the respective regime of Welfare Enterprises, SFCs and PNUs, the relations between them and the uniform supporting measures should be coordinated. A. The margin preferences of the uniform supporting measures regime should be set based on the margin preferences of the current ones and find an equantequation as a criterion according to the social realities and social policies. B. The one with larger margin of preferences will be adopted between the two criteria. The larger margin preference is set by the situations of the organizations and social policies; thereby they’re reasonable with a certain degree and shouldn’t be modified easily in a short time.

The uniform supporting measures regime is a vital part of the legal system for social enterprise and can provide social enterprises with resources. And it’s not only a supplement for the regimes of Welfare Enterprises, SFCs and PNUs, but also a useful method to support the new social enterprises. In addition, it can work as a regulator to balance the resource locating in adaptable places.

4.4.2 The regulation regime

The function of the regulation preformed by governments is to monitor the activities of the social enterprises according to related laws. By the legal system of social enterprise in the U.K. and Italy, regulations run through the whole process of the social enterprise existing. In the U.K, the legal system of social enterprise has a mature regulations regime and the government acquired a great success in regulating the CIC. In addition, the regime of the company model is more adaptable to most social enterprises in China with the marketization reform undergoing. Meanwhile, the useful experience from other regulation regimes will be taken into consideration, for example that of Italy.

When sinicizing the advanced experience, the following situations in China should be paid serious attentions to: A. the diversity of social enterprises in China. For

example, the social enterprises in China include all the legal forms of social enterprises, the scales of them range in a large span, and the heterogeneity of them is obvious.¹⁹² This situation requires that the regulation regime should be flexible. B. The regulation regime should improve the efficiency of the social enterprises through the internalization of regulation mechanisms. Efficiency is one of the most serious problems in the development of the existing quasi social enterprises and the main reason is the limitations of their governance regimes. Thereby one mission of the regulation regime is to improve the efficiency of the governance in social enterprises. C. The regulation regime should coincide with other related regimes, such as admission regimes of Welfare Enterprises, SFCs and PNUs.

The key points of the regulations regulation regime should be designed as following:

Firstly, the regimes of accreditation and exit. A. regimes of accreditation. According to the diversity of social enterprises in China, we should establish a uniform regime for them besides the current accreditation regimes. The requirements of the admission have been analyzed in the regime for the new social enterprises. The regulations should regulate the following aspects: (1) formal examination. Its purpose is to confirm whether documents for establishing a social enterprise satisfy the requirements according to related laws, and whether social purpose have been stated in the article of the social enterprise, just like the “Community Interest Statement” in the regulation regime of CIC. (2) Establish a mechanism to overall examine whether the organization meets the substantive requirements of the law, especially the requirement of social purpose. This regime is similar to the “Community Interest test” in the regulation regime of CIC. (3) Give some suggestions to the applicants for making up if the applications are denied. B. the exit regime. If a social enterprise ceases to be a social enterprise, the regulator should cancel its rights as a social enterprise. The situations of ceasing to be a social enterprise usually include: it no longer satisfies the requirements of social enterprise; it converses to other

¹⁹² See The homepage of the Ministry of Civil Affairs of P.R.C. “The Ministry of Civil Affairs issued the statistical bulletin of the development of social services in 2013.” <http://www.mca.gov.cn/article/zwgk/mzyw/201406/20140600654488.shtml>, 2014-05-26 log in.

organizations; it goes bankruptcy; it dissolves, and so on.

Secondly, routine regulations. Besides the admission measures, the regulator should make routine regulations: A. Annual reports. The social enterprise should report what it has benefited the community during the financial year, the consultation what the social enterprise has done for the community; and so on.¹⁹³ B. financial regulations. The regulator should check the financial items of the social enterprise, for example the situation of asset lock, issuing shares and bond, the use of loads, the distributions, and so on.¹⁹⁴ C. the implement of governance regime. The regulator should regulate the implement of the governance regime according to the articles of the social enterprise and related laws.

Thirdly, establish specialized institutions. The State Council should establish specialized institutions to charge for regulations. And the local governments should also establish respective institutions to perform the regulation functions. In addition, the regime of the specialized institutions should be established.

Fourthly, the mechanism of responsibility. The regulation regime should also establish the mechanism of responsibility, including the acts in violation of regulations, laws, and respective illegal responsibilities.

The regulation regime is the safeguard mechanism for social enterprises. On one hand, it could build up the limitations inside the regime of social enterprises .On the other hand, it could realize the policy intentions of the regulator and adjust the effect on the current laws and regulations for the social enterprises.

4.6 The summary of the chapter

In this chapter I offered some suggestions about legislation of social enterprise legal system in China based on the the research in former chapters. The establishment of the legal system in China should sinicize the advanced legal theory and experience of legal practice of social enterprise in other countries. Therefore, I learn from legal systems in advanced countries based on the needs of the realities in China, integrating

¹⁹³See Antonella Noya. "The Chang Boundaries of Social Enterprises." Local Economic and Employment Development, (2009):48.

¹⁹⁴See Office of the Regulator of Community Interest Companies. "Information and guidance notes." Chapter 7, (2010): 3-11.

the two factors in the process of the establishment. The first step is to design an outline for the legal system, mainly including the important factors for the establishment. In the second step, I provided the suggestions on how to reform the current quasi social enterprises into real social enterprises and establish a new legal form for new social enterprises, so the main part of the legal system has established. In the last step, I offered some uniform suggestions about supporting and regulating diversity of social enterprises in China. The social enterprise legal system in China is a complicated program and it needs plenty of researches and practice. The establishment of social enterprise legal system is just a little part of the research. Thereby the limitations of it will intrigue more researchers to contribute themselves to the program.

Conclusion

The term of “Social Enterprise” first emerged in Italian laws in 1991. It is a new way to utilize businesses to realizing social welfare, which stems from the limitations of traditional non-profit organizations and the self-examination of excessive commercialization of market-oriented economy. Since it can integrate both the advantages of businesses and the non-profit organizations, by now, it has played an important role in addressing social issues and is becoming a world phenomenon.

Since 2004, some practices of social enterprises have been carried out in China, but their social impact is limited due to the lack of the system support. Meanwhile some quasi social enterprises can't encounter some difficulties for the limitations of the legal systems. Therefore, it is necessary to study related theories and establish a uniform social enterprise legal system in China. This article proposes to establish a new social enterprise legal system in China as a conclusion, based on the theories and experience of social enterprises practices in other countries as well as the Chinese realities, which can be listed as following:

Firstly, the advanced theories and experience of social enterprises practices in other countries should be sinicized, simply because these theories and experience are based on the social realities of other countries, which are different from those in China. Thus they could not be implied in China without any reform. In other word, the sinicization of social enterprises should be based on the analysis of the realities in China.

Secondly, the establishment of the legal system should be integrated with the organizational forms and related laws. Since the current quasi social enterprises, despite that there are various limitations, have made a great success in addressing social issues in China, the uniform social enterprise legal system should integrate them and their respective laws into the entire system. What is more, it can reduce the cost of both system reform and new legal system implement in the future. Also, it can make up the limitations of the former laws.

Thirdly, the mixed model should be chosen for the legal form. The mixed models

include the company model, the cooperatives model and the open model. Since the current quasi social enterprises are formed of cooperatives form, enterprise form and individual one, the social enterprise legal system should recognize them as social enterprises after the reforms and create an open model form for new social enterprises.

Fourthly, the supporting regimes of social enterprises should be integrated with the current ones. The uniform social enterprise legal system will contain a new supporting regime and current supporting regimes for existing quasi social enterprises. On one hand, the retention of the current supporting regimes favors the stabilizations of the quasi social enterprises. On the other hand, the uniform supporting regime offers supporting measures for new social enterprises and some adjustments of current supporting regimes for existing quasi social enterprises.

Besides the conclusions above, for the limited research ability of the author and the lack of literatures, there are still limitations in the research.

Firstly, the analysis of the samples has the limitations in terms of insufficient quantification. During the research, only few samples, which are considered to be classical and advanced, are chosen to be analyzed. Besides these countries, there are still other countries, such as some Asian countries and regions, like South-Korea, Japan and Taiwan province, may be worth analyzing. Therefore, the samples chosen may be classical, but the reference of them may be not strong enough and may affect the generality, objectivity and reliability of the study.

Secondly, the analysis of samples is not profound enough. In the study, the analysis of samples is only made by means of comparative jurisprudence, historicism and factorization, but seldom involving the culture and social context of them, which may be very important for the study, especially for legal transplantations. In addition, the literature research is mainly based on secondary sources, and the empirical analysis is based secondary data, which may reduce the reliabilities of the research.

Thirdly, the legislative suggestions are not quantitative yet. The legislative suggestions provided in the last chapter are simply outlines of the legal system, rather than specific provisions, which are rough to the disadvantage of implements.

Fourthly, the theoretical analysis is insufficient. The study put emphasis on the system analysis instead of theoretical analysis, thus the theoretical base is not substantial.

Since the limitations of the research and the need of the realities in China, there are some important issues of the subject to further development.

Firstly, carry out more studies on the theories and legislative practices in other countries. Some samples in the developing countries are worth researching, for example Bangla, which is famous for its Grameen Bank, pioneering the concepts of microcredit and microfinance. The similarity of its stage of development as China may also reinforce the reference of the analysis.

Secondly, carry out more studies on the related legislation in China. The study about the laws for quasi social enterprises in China should be paid more attention to. In addition, the perspectives of the research should be diversified: not only from the perfection of the limitations, but also from converting into the new legal form of social enterprises.

Thirdly, combine the studies from economics, laws, management, etc. The subject studied is so comprehensive and complicated that involves economics, laws, management, sociology and other related subjects, which asks for scholars from other research fields to dedicate into it.

If these researches were carried out by other scholars, the social enterprise legal system will be established in China in the near future. Considering the urgent needs of the realities in China, the conclusion of this study is just a period of this dissertation, and a comma of the subject.

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